SUPREME COURT OF THE UNITED STATES.

No. 334.

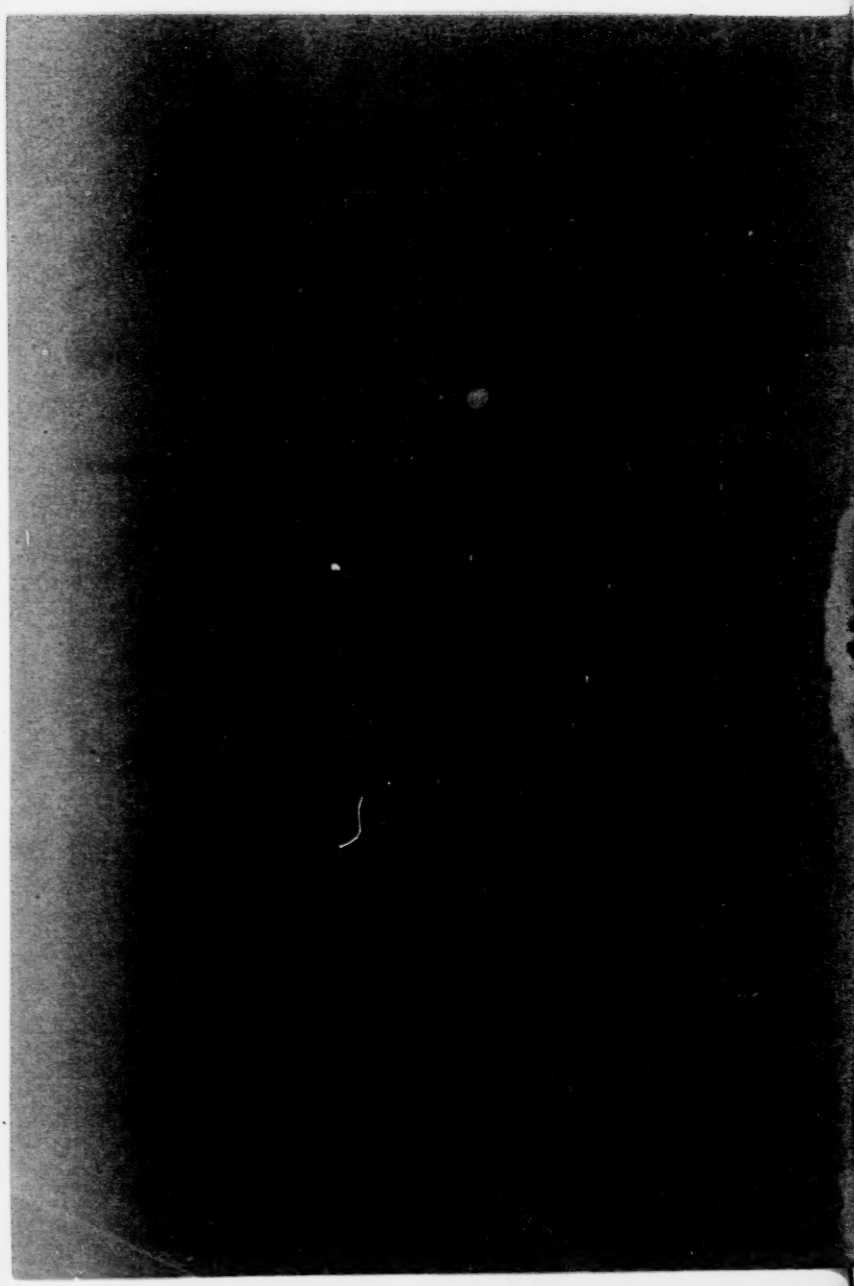
JOSHUA BARRELL, APPELLANT,

vs.

THE PROPELLER "MOHAWK," THE WESTERN TRANSPORTATION COMPANY, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.



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a Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States presiding, and the Hon. Thomas Drummond, district judge of said district court, associate, judges of said circuit court, on Monday, the tenth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth.

WM. H. BRADLEY, *Clerk.*

Appeal from the district court.

THE CHICAGO MARINE AND FIRE INSURANCE Company, David Douse, Ammi Douse, and John D. Muir *vs.* THE PROPELLER MOHAWK. } In admiralty.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twelfth day of October, in the year of our Lord one thousand eight hundred and sixty-three, came

b The Chicago Marine and Fire Insurance Company, libellant, by Robert Rae, esq., its proctor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, its transcript of a record from the district court of the United States for the northern district of Illinois, in admiralty, which said transcript is in the words and figures following, to wit:

1 Pleas in the district court of the United States of America for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, judge of said district court, on Wednesday, the thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-three, and of our independence the eighty-eighth year.

WM. H. BRADLEY, *Clerk.*

THE CHICAGO MARINE AND FIRE INSURANCE Company *vs.* PROPELLER MOHAWK. } In admiralty.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the first day of August, in the year of our Lord one thousand eight hundred and sixty-two, The Chicago Marine and Fire Insurance Company, libellant, by Robert Rae, esq., its proctor, filed in the office of the clerk of the district court of the United States for the northern district of Illinois, at Chicago,

2 in said district, its libel against the propeller Mohawk, respondent. Also, at the same time, filed its stipulation for costs in said cause; which said libel and stipulation are in the words and figures following, to wit:

Libel.

To the honorable Thomas Drummond, judge of the United States district court for the northern district of Illinois, in admiralty:

The libel of the Chicago Marine and Fire Insurance Company, created by the laws of the State of Illinois, and existing in the district aforesaid, against the propeller Mohawk, her engines, boilers, machinery, boats, tackle, apparel, and furniture, in a cause of contract of affreightment, civil and maritime, alleges as follows:

First. That the propeller Mohawk, now lying at Chicago in the district aforesaid, is a vessel of more than twenty tons burthen, and at the time when the cause of action hereinafter stated and set forth arose was, and is, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States, upon the lakes and the navigable waters connecting the same.

3 Second. That on or about the 31st day of October, A. D. 1860, the Chicago Marine and Fire Insurance Company, libellant aforesaid, shipped on board the propeller Mohawk, then lying in the port of Chicago, in the State of Illinois, "the said propeller then being a common carrier," ten thousand bushels of number one spring wheat, to be transported and conveyed on board said propeller from the port of Chicago, in the State of Illinois, to the port of Buffalo, in the State of New York, and to be delivered by the said propeller Mohawk safely at said port of Buffalo to the consignee of said libellant, upon paying the freight of fifteen cents per bushel for each and every bushel so delivered as aforesaid, according to the tenor and effect of the bill of lading made, signed, and delivered by the agent of said propeller Mohawk to said libellant in the premises, a copy of which is hereunto annexed, and which libellant prays may be taken as part of this libel.

Third. That said cargo of ten thousand bushels of wheat was, at the time it was delivered by the libellant on board said propeller Mohawk as aforesaid, in good condition, and of the value of about ten thousand dollars. That said wheat was, at the time of its delivery to said propeller for transportation as aforesaid, the property

4 of libellant, and of the value above stated.

Fourth. That said wheat was not carried and transported by said propeller Mohawk from said port of Chicago to the said port of Buffalo, nor was the same, nor any part thereof, delivered at Buffalo to the consignee of libellant, or to any person or persons for libellant, but, on the contrary, the said wheat, whilst on board the propeller and in the possession, custody, and care of the officers of said propeller, became and was wholly lost to libellant.

Fifth. That said wheat was not carried and transported by said propeller Mohawk from said port of Chicago to the said port of Buffalo; that by reason of the said failure of the said propeller to deliver said wheat as aforesaid at Buffalo, according to the obligations of said bill of lading, and by reason of the loss aforesaid, libellant has suffered damage to the full amount of the value of said wheat, to wit,

the sum of ten thousand dollars, for which the said libellant claims compensation of and from the owner of said propeller Mohawk, but that said owner of said propeller denies any and all liability for and on account of said loss, and refuses to make any satisfaction
5 for said loss, although by libellant often requested so to do.

Sixth. That there is now due and unpaid libellant, from said owner, the sum of ten thousand dollars, for and on account of said contract of affreightment.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court, whereupon the libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said propeller Mohawk, her engines, boilers, machinery, boats, tackle, apparel, and furniture, and that the said owner and all persons claiming any right, title, and interest in the said propeller Mohawk may be cited to appear and answer upon oath all and singular the matters aforesaid; and that the said vessel may be condemned and sold to pay the amount due to the libellant, with interest and costs, and that the libellant may have such other and further relief as in law or justice he may be entitled to receive.

CHICAGO M. & F. INSURANCE CO.,
By R. RAE, *Proctor.*
JOSHUA BARRELL.

6 Sworn and subscribed before me this 1st day of Aug., A. D. 1862.

P. A. HOYNE, *U. S. Com'r.*

CHICAGO, *Oct.* 31*st*, 1860.

Shipped in good order and condition, by N. K. Fairbank, as agent and forwarder, for account and at the risk of whom it may concern, on board the propeller Mohawk, whereof Pheatt is master, the following articles as here marked and described, to be delivered in like good order and condition, as addressed on the margin, or to his or their assigns or consignees, upon paying the freight and charges as noted below, the dangers of navigation, fire, and collision excepted. In witness whereof, the said master of said vessel hath affirmed to bills of lading of this tenor and date; one of which being accomplished, the other to stand void.

10,000 bushels of sp'g wheat, ac't Chicago Marine and Fire Insurance Co. Care J. D. Sawyer, Buffalo. Freight to Buffalo, 15 cts.
(Signed) JON. W. TUTTLE, *Ag't.*

Indorsed: Filed Aug. 1st, 1862.

WM. H. BRADLEY, *Cl'k.*

7 *Libellant's Stipulation.*

District court, September term, A. D. 1862.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

Whereas a libel was filed in this court on the first day of August, A. D. 1862, by the Chicago Marine and Fire Insurance Company

against the propeller Mohawk, her engines, machinery, &c., boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant; and the said libellant, Jonathan Barrell, and Robert Rae, surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellant or their surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall pay all such costs as shall be awarded against by this court, or, in case of appeal, by the appellate court.

JOSHUA BARRELL.
R. RAE.

8 NORTHERN DISTRICT OF ILLINOIS, *ss:*

R. Rae, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

R. RAE.

Sworn this 1st day of August, A. D. 1862, before me.
P. A. HOYNE, *U. S. Com'r.*

Indorsed: Filed Aug. 1st, A. D. 1862.
WM. H. BRADLEY, *Clerk.*

Whereupon a monition issued out of said clerk's office against said respondent, which said monition is in the words and figures following, to wit:

Monition.

THE UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The United States of America to the marshal of the northern district of Illinois, greeting:

Whereas a libel hath been filed in the district court of the United States in and for the northern district of Illinois, on the first day of August, in the year of our Lord one thousand eight hundred and sixty-two, by the Chicago Marine and Fire Insurance Company against the propeller Mohawk, her engines, boilers, machinery, boats,
9 tackle, apparel, and furniture, for reasons and cause in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in said libel articulately propounded, and that this court would be pleased to pronounce for the sum of ten thousand dollars, the damages alleged

in said libel, besides costs of suit: You are therefore commanded to attach the said propeller Mohawk, her engines, boilers, machinery, boats, tackle, apparel, and furniture, and to detain the same in your custody until the further order of this court respecting the same, and to give due notice by publication in some daily newspaper printed in the city of Chicago for fourteen days previous to the day of trial, and by notice posted up in the most public manner for the space of fourteen days at or near the place of trial, of such seizure and libel to all persons claiming the said propeller Mohawk, her engines, boilers, machinery, boats, tackle, apparel, and furniture, or knowing or having anything to say why this court should not pronounce against the same according to the prayer of the said libel; and
10 that they be and appear before the said court to be held in and for the northern district of Illinois, at the United States court-room in the city of Chicago, in said district, on the first Monday in September next, if that be a day of jurisdiction; if not, then on the first day of jurisdiction thereafter, at 10 o'clock in the forenoon of that day, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises, do you then and there make return, together with this writ.

Witness the honorable Thomas Drummond, judge of said court, this first day of August, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the 87th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

By virtue of the within writ, I have on this 1st day of August, A. D. 1862, attached the within-named propeller Mohawk, and have on the same day released said propeller from custody, by order of R. Rae, libellants' proctor.

Bond herewith returned.

J. R. JONES, *U. S. Marshal,*
By GEO. L. WEBB, *Deputy.*

Indorsed: Filed this 8th day of Oct., A. D. 1862.
WM. H. BRADLEY, *Clerk.*

11 *Bond.*

On the same day, to wit, the eighth day of October, A. D. 1862, the bond for release of said respondent was filed in said clerk's office, which said bond, together with the indorsements thereon and the appearance of claimant thereto attached, is in the words and figures following, to wit:

Know all men by these presents that we, The Western Transportation Company as principal, and Dean Richmond, of Batavia, in the State of New York, and Jonathan W. Tuttle, as sureties, are held and firmly bound unto The Chicago Marine and Fire Insurance Company in the sum of twenty thousand dollars lawful money of the United States of America, to be paid to the said The Chicago Marine and Fire Insurance Company, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, our heirs

executors, and administrators firmly by these presents. Sealed with our seals, dated the fifteenth day of August, one thousand eight hundred and sixty-two.

Whereas in a certain cause of civil and maritime moved and prosecuted in the district court of the United States of America for the northern district of Illinois, on behalf of the abovenamed obligees, against the ship or vessel called the propeller Mohawk, her
12 boats, tackle, apparel, and furniture, a warrant of arrest has been issued out of the said court against the said ship or vessel, boats, tackle, apparel, and furniture, in virtue of which said warrant the said ship or vessel, her tackle, apparel, and furniture have been arrested by J. R. Jones, one of the deputies of the marshal of the said district, and are now in his custody: Now, therefore, the condition of the above obligation is such that if The Western Transportation Company, the claimant of the said ship or vessel, her boats, tackle, apparel, and furniture, shall well and truly abide and answer the decree of the said court in the aforesaid cause, without fraud or delay, then the above obligation to be void; otherwise it shall remain in full force and virtue.

THE WESTERN TRANSPORTATION CO.,
By JNO. ALLEN. [SEAL.]
DEAN RICHMOND. [SEAL.]
JON. W. TUTTLE. [SEAL.]

NORTHERN DISTRICT OF NEW YORK, *Erie county, ss:*

I hereby certify that on this fifteenth day of August, 1862, before me came the abovenamed Dean Richmond, to me known to be the same person described in and who executed the above bond, and acknowledged that he had executed the same for the purposes
13 therein mentioned, and being by me duly sworn, the said Dean Richmond made oath that he has property in the State of Illinois and within the northern district thereof, worth forty thousand dollars, over and above all incumbrances thereon. And on the same day came before me John Allen, junior, to me known, and made oath that he is the president of the Western Transportation Company, the principal in the foregoing bond, and that the seal affixed thereto is the corporate seal of the said The Western Transportation Company, and was affixed thereto by the authority of the board of directors of said company, and that by the like authority he did subscribe the name of the said company thereto and his own name, as president thereof, for the purposes therein expressed.

P. G. PARKER, *U. S. Commissioner.*

Approved by R. RAE, *Proctor.*

Approved: THOMAS DRUMMOND.

The Western Transportation Company, owners of the said propeller Mohawk, come, and by George C. Bates, their proctor and advocate, enter a general appearance in said cause, Sept. 25th, 1862.

GEO. C. BATES, *Proctor and Advocate.*

Indorsed: Filed Oct. 8th, 1862.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the twentieth day of October, A. D.
14 1862, came the Western Transportation Company, by its proctor, and filed in said clerk's office its answer and its stipulation in said cause, which said answer and stipulation are in the words and figures following, to wit:

Answer.

United States district court, northern district of Illinois, in admiralty.

To the honorable Thomas Drummond, judge of the district court of the United States in and for the northern district of Illinois:

The answer of the Western Transportation Company, claimant and respondent to the libel and complaint of the Chicago Fire and Marine Insurance Company, of Chicago, against the propeller Mohawk, her boilers, boats, tackle, apparel, and furniture, heretofore exhibited and filed in this court in a cause of contract, civil and maritime, alleges and propounds as follows:

First. That it, the said respondent, is a corporation created, organized, and existing under the laws of the State of New York, and now is, and was at the several times in the said libellant's complaint mentioned, the owners of the said propeller Mohawk, her engine, boats, tackle, apparel, and furniture.

15 Second. And as to several matters and things stated and charged in the first article of said libel, the respondent admits that the said propeller was, at the several times in the said libel mentioned, enrolled and licensed for the coasting trade on the lakes, and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States and the navigable waters connecting the same.

Third. And as to the several matters and things stated and charged in the second article of the said libel, the respondent denies the same, and each and every part thereof, in manner and form as the same are therein stated and charged, except in so far as the same are hereinafter admitted to be true or are consistent with the facts hereinafter stated.

Fourth. And as to the several matters and things in the third article of the said libel stated and charged, the said respondent admits that on or about the day mentioned in said libel, there was delivered on board the said propeller Mohawk, for transportation from Chicago to Buffalo, ten thousand bushels of wheat, at the freight of fifteen cents per bushel; that the same was in good condition and of the
16 value of about ten thousand dollars; and as to each and every other matter or thing in the said third article stated and charged, the respondent denies the same, in manner and form as the same are therein stated and set forth.

Fifth. And as to several matters and things in the fourth article of the said libel stated and charged, the respondent admits that the wheat was not carried from Chicago to Buffalo, nor was the same delivered at Buffalo to the consignee of the libellant, or to any person

executors, and administrators firmly by these presents. Sealed with our seals, dated the fifteenth day of August, one thousand eight hundred and sixty-two.

Whereas in a certain cause of civil and maritime moved and prosecuted in the district court of the United States of America for the northern district of Illinois, on behalf of the abovenamed obligees, against the ship or vessel called the propeller Mohawk, her
12 boats, tackle, apparel, and furniture, a warrant of arrest has been issued out of the said court against the said ship or vessel, boats, tackle, apparel, and furniture, in virtue of which said warrant the said ship or vessel, her tackle, apparel, and furniture have been arrested by J. R. Jones, one of the deputies of the marshal of the said district, and are now in his custody: Now, therefore, the condition of the above obligation is such that if The Western Transportation Company, the claimant of the said ship or vessel, her boats, tackle, apparel, and furniture, shall well and truly abide and answer the decree of the said court in the aforesaid cause, without fraud or delay, then the above obligation to be void; otherwise it shall remain in full force and virtue.

THE WESTERN TRANSPORTATION CO.,
By JNO. ALLEN. [SEAL.]
DEAN RICHMOND. [SEAL.]
JON. W. TUTTLE. [SEAL.]

NORTHERN DISTRICT OF NEW YORK, *Erie county, ss:*

I hereby certify that on this fifteenth day of August, 1862, before me came the abovenamed Dean Richmond, to me known to be the same person described in and who executed the above bond, and acknowledged that he had executed the same for the purposes
13 therein mentioned, and being by me duly sworn, the said Dean Richmond made oath that he has property in the State of Illinois and within the northern district thereof, worth forty thousand dollars, over and above all incumbrances thereon. And on the same day came before me John Allen, junior, to me known, and made oath that he is the president of the Western Transportation Company, the principal in the foregoing bond, and that the seal affixed thereto is the corporate seal of the said The Western Transportation Company, and was affixed thereto by the authority of the board of directors of said company, and that by the like authority he did subscribe the name of the said company thereto and his own name, as president thereof, for the purposes therein expressed.

P. G. PARKER, *U. S. Commissioner.*

Approved by R. RAE, *Proctor.*

Approved: THOMAS DRUMMOND.

The Western Transportation Company, owners of the said propeller Mohawk, come, and by George C. Bates, their proctor and advocate, enter a general appearance in said cause, Sept. 25th, 1862.

GEO. C. BATES, *Proctor and Advocate.*

Indorsed: Filed Oct. 8th, 1862.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the twentieth day of October, A. D.
14 1862, came the Western Transportation Company, by its proctor, and filed in said clerk's office its answer and its stipulation in said cause, which said answer and stipulation are in the words and figures following, to wit:

Answer.

United States district court, northern district of Illinois, in admiralty.

To the honorable Thomas Drummond, judge of the district court of the United States in and for the northern district of Illinois:

The answer of the Western Transportation Company, claimant and respondent to the libel and complaint of the Chicago Fire and Marine Insurance Company, of Chicago, against the propeller Mohawk, her boilers, boats, tackle, apparel, and furniture, heretofore exhibited and filed in this court in a cause of contract, civil and maritime, alleges and propounds as follows:

First. That it, the said respondent, is a corporation created, organized, and existing under the laws of the State of New York, and now is, and was at the several times in the said libellant's complaint mentioned, the owners of the said propeller Mohawk, her engine, boats, tackle, apparel, and furniture.

15 Second. And as to several matters and things stated and charged in the first article of said libel, the respondent admits that the said propeller was, at the several times in the said libel mentioned, enrolled and licensed for the coasting trade on the lakes, and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States and the navigable waters connecting the same.

Third. And as to the several matters and things stated and charged in the second article of the said libel, the respondent denies the same, and each and every part thereof, in manner and form as the same are therein stated and charged, except in so far as the same are hereinafter admitted to be true or are consistent with the facts hereinafter stated.

Fourth. And as to the several matters and things in the third article of the said libel stated and charged, the said respondent admits that on or about the day mentioned in said libel, there was delivered on board the said propeller Mohawk, for transportation from Chicago to Buffalo, ten thousand bushels of wheat, at the freight of fifteen cents per bushel; that the same was in good condition and of the
16 value of about ten thousand dollars; and as to each and every other matter or thing in the said third article stated and charged, the respondent denies the same, in manner and form as the same are therein stated and set forth.

Fifth. And as to several matters and things in the fourth article of the said libel stated and charged, the respondent admits that the wheat was not carried from Chicago to Buffalo, nor was the same delivered at Buffalo to the consignee of the libellant, or to any person

executors, and administrators firmly by these presents. Sealed with our seals, dated the fifteenth day of August, one thousand eight hundred and sixty-two.

Whereas in a certain cause of civil and maritime moved and prosecuted in the district court of the United States of America for the northern district of Illinois, on behalf of the abovenamed obligees, against the ship or vessel called the propeller Mohawk, her
12 boats, tackle, apparel, and furniture, a warrant of arrest has been issued out of the said court against the said ship or vessel, boats, tackle, apparel, and furniture, in virtue of which said warrant the said ship or vessel, her tackle, apparel, and furniture have been arrested by J. R. Jones, one of the deputies of the marshal of the said district, and are now in his custody: Now, therefore, the condition of the above obligation is such that if The Western Transportation Company, the claimant of the said ship or vessel, her boats, tackle, apparel, and furniture, shall well and truly abide and answer the decree of the said court in the aforesaid cause, without fraud or delay, then the above obligation to be void; otherwise it shall remain in full force and virtue.

THE WESTERN TRANSPORTATION CO.,
By JNO. ALLEN. [SEAL.]
DEAN RICHMOND. [SEAL.]
JON. W. TUTTLE. [SEAL.]

NORTHERN DISTRICT OF NEW YORK, *Erie county, ss:*

I hereby certify that on this fifteenth day of August, 1862, before me came the abovenamed Dean Richmond, to me known to be the same person described in and who executed the above bond, and acknowledged that he had executed the same for the purposes
13 therein mentioned, and being by me duly sworn, the said Dean Richmond made oath that he has property in the State of Illinois and within the northern district thereof, worth forty thousand dollars, over and above all incumbrances thereon. And on the same day came before me John Allen, junior, to me known, and made oath that he is the president of the Western Transportation Company, the principal in the foregoing bond, and that the seal affixed thereto is the corporate seal of the said The Western Transportation Company, and was affixed thereto by the authority of the board of directors of said company, and that by the like authority he did subscribe the name of the said company thereto and his own name, as president thereof, for the purposes therein expressed.

P. G. PARKER, *U. S. Commissioner.*

Approved by R. RAE, *Proctor.*

Approved: THOMAS DRUMMOND.

The Western Transportation Company, owners of the said propeller Mohawk, come, and by George C. Bates, their proctor and advocate, enter a general appearance in said cause, Sept. 25th, 1862.

GEO. C. BATES, *Proctor and Advocate.*

Indorsed: Filed Oct. 8th, 1862.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the twentieth day of October, A. D.
14 1862, came the Western Transportation Company, by its proctor, and filed in said clerk's office its answer and its stipulation in said cause, which said answer and stipulation are in the words and figures following, to wit:

Answer.

United States district court, northern district of Illinois, in admiralty.

To the honorable Thomas Drummond, judge of the district court of the United States in and for the northern district of Illinois:

The answer of the Western Transportation Company, claimant and respondent to the libel and complaint of the Chicago Fire and Marine Insurance Company, of Chicago, against the propeller Mohawk, her boilers, boats, tackle, apparel, and furniture, heretofore exhibited and filed in this court in a cause of contract, civil and maritime, alleges and propounds as follows:

First. That it, the said respondent, is a corporation created, organized, and existing under the laws of the State of New York, and now is, and was at the several times in the said libellant's complaint mentioned, the owners of the said propeller Mohawk, her engine, boats, tackle, apparel, and furniture.

15 Second. And as to several matters and things stated and charged in the first article of said libel, the respondent admits that the said propeller was, at the several times in the said libel mentioned, enrolled and licensed for the coasting trade on the lakes, and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States and the navigable waters connecting the same.

Third. And as to the several matters and things stated and charged in the second article of the said libel, the respondent denies the same, and each and every part thereof, in manner and form as the same are therein stated and charged, except in so far as the same are hereinafter admitted to be true or are consistent with the facts hereinafter stated.

Fourth. And as to the several matters and things in the third article of the said libel stated and charged, the said respondent admits that on or about the day mentioned in said libel, there was delivered on board the said propeller Mohawk, for transportation from Chicago to Buffalo, ten thousand bushels of wheat, at the freight of fifteen cents per bushel; that the same was in good condition and of the
16 value of about ten thousand dollars; and as to each and every other matter or thing in the said third article stated and charged, the respondent denies the same, in manner and form as the same are therein stated and set forth.

Fifth. And as to several matters and things in the fourth article of the said libel stated and charged, the respondent admits that the wheat was not carried from Chicago to Buffalo, nor was the same delivered at Buffalo to the consignee of the libellant, or to any person

or persons at Buffalo for the libellants, but the respondent denies that the said wheat or any portion thereof became lost to the libellants while on board the propeller and in the custody, possession, and care of the officers of the said propeller. On the contrary thereof the respondent says that the said propeller and the officers thereof were prevented from carrying the said wheat to the place of destination and there delivering the same by the act of the said libellants, as is hereinafter particularly stated and set forth, and that the officers of the propeller delivered all of said wheat at a place short of the place of destination to a person claiming and having title thereto from and through the libellants, and that such delivery was so made with the knowledge, consent, direction, and concurrence of the said libellants.

17 Sixth. And as to the several matters and things in the fifth article of said libel contained, the respondent denies the same, and each and every part thereof, in manner and form as the same are therein stated and set forth, except that it denies any and all liability for said pretended loss, and refuses to make any satisfaction therefor to the libellants.

Seventh. And as to the several matters and things in the sixth article of said libel stated and charged, the respondent denies the same, and each and every part thereof, in manner and form as the same are therein stated and charged.

Eighth. And as to the several matters and things in the seventh article of said libel contained, the respondent denies the same, and each and every part thereof, in manner and form as the same are therein stated and set forth.

Ninth. And further answering the said libel and complaint, the respondent says that the wheat mentioned in the said libel and in the bill of lading therein set forth and referred to, was, on or about the day mentioned in the said libel, shipped on board the said propeller Mohawk, which was then lying at Chicago aforesaid, and destined on a trip or voyage from Chicago to Buffalo, by one Isaac Sherwood,

18 who was then the owner thereof, under a certain contract of affreightment then and there made between the said Sherwood and the said respondent, its officers and agents, at Chicago aforesaid, in and by which said contract the said respondent undertook and agreed to carry and transport the said wheat on board the said propeller from Chicago to Buffalo at the rate of freight specified in the bill of lading set forth in the said libel, and there delivered the same to the said Sherwood, or to his order or assigns, upon payment of the freight and charges agreed to be paid therefor, dangers of navigation, fire, and collision excepted; that one N. K. Fairbanks, of the city of Chicago, having made certain advances of money to the said Sherwood, either upon his own acount as principal, or on account of the said libellants, as agent, and which the said respondent is unable to state, it was then and there agreed by and between the said Sherwood and the said Fairbanks that he, the said Fairbanks, or the person or persons on whose account such advance was made, should have a lien upon and control of the said

wheat for the purpose of securing the repayment of such advances; and thereupon the bill of lading in the libel set forth was, by the direction of the said Sherwood, made out and delivered to the said Fairbanks as security for such advances, and not otherwise, in order that he, the said Fairbanks, or the persons on whose account
19 such advances had been made, might control the property or the avails thereof, for the purposes of such security. And the said respondent, further answering, says that the advances so made by the said Fairbanks and the said libellants, have been and were fully paid to the said libellants before the commencement of this suit, and that the interest of the said libellants in and to the said wheat was terminated before the commencement of this suit.

Tenth. And further answering the said libel and complaint, the respondent says that upon the said shipments having been so made as stated and set forth in the ninth article of this answer, the said Sherwood caused and procured the said wheat to be insured against the perils and dangers of navigation upon the said trip or voyage from Chicago to Buffalo aforesaid, by and in the Mutual Insurance Company, of Buffalo, a corporation created under the laws of the State of New York, and duly authorized to make insurance of this and the like character, and directed the loss, if any there should be, to be paid to the said Chicago Fire and Marine Insurance Company, all of which was done as further security for the advances in the ninth article of this answer mentioned and referred to.

Eleventh. And, further answering, the respondent says that
20 the said propeller Mohawk, on or about the thirty-first day of October, one thousand eight hundred and sixty, left the said port of Chicago for Buffalo aforesaid, on her said trip or voyage, being then in all respects tight, staunch, strong, and seaworthy, and while in the successful prosecution of her said voyage, in the evening of the sixth of November, one thousand eight hundred and sixty, was, by the perils and dangers of navigation, and not otherwise, and without fault of the said propeller, her officers or crew, or any or either of them, stranded and grounded upon St. Clair flats, and then and there became temporarily disabled by reason of and in consequence of such stranding, and was compelled to suspend the further prosecution of the said voyage for the time being, and until the necessary repairs to enable the said propeller to proceed upon and to complete her said voyage could be made. And, further answering, the said respondent says that the person named in the said bill of lading to whose care the said wheat was consigned at Buffalo, that is to say, the said James D. Sawyer, acting as the agent of the said libellants and of the said Sherwood, immediately upon being informed of the accident to and detention of the said propeller, as hereinbefore mentioned, did, for and on account of the said libellants, and for and on account of the owners of the said wheat, whose interest
21 was covered by the insurance hereinbefore mentioned, abandon the same to the insurers thereon, that is to say, to the Mutual Insurance Company, of Buffalo, and claimed as for a total loss under the said insurance so made as aforesaid. And thereupon the said insurers, that is to say, the said The Mutual Insurance Company,

of Buffalo, did then and there accept the said abandonment so made as aforesaid, and did then and there pay to the said libellants, and to the said Sherwood, the amount for which the said wheat was so insured as aforesaid. And the said The Mutual Insurance Company, of Buffalo, thereby became and was the owner of the said wheat mentioned in the said libel and in the bill of lading therein set forth. And thereupon the said The Mutual Insurance Company, of Buffalo, did, with the assent of the said libellants and of the said Sherwood, assume to be the owner of the said wheat and each and every part thereof. And the said respondent further says, that from and after the said abandonment and the acceptance thereof, the said propeller and the officers thereof, and the said respondent, held the said wheat as the bailees of the said The Mutual Insurance Company, of Buffalo, and did thereafter deliver to it, the said The Mutual Insurance Company, of Buffalo, the wheat mentioned in the said bill of lading, and each and every part thereof; all of which was well known to the said libellants, and all of which was done with the knowledge, consent, concurrence, and approbation of the said libellants, and of the said Sherwood.

22

Twelfth. And, further answering, the said respondent says that the detention of the said propeller in consequence of the said accident and misfortune was of temporary character, and that within a few days after the said occurrence the said propeller was got off and taken to Detroit, a distance of about thirty miles from the place of the accident, and was subsequently taken from Detroit to Buffalo, where she arrived before the close of navigation for the then present season, and within two weeks from the time of the accident. And the respondent further says that the place of the accident and detention was directly in the track of all the vessels engaged in navigating the lakes between the port of Detroit and the upper lakes, and that the said wheat, all of which remained on board the said propeller, could have been readily transhipped and sent forward to Buffalo by other vessels in case it should have been found impracticable to have sent the same forward in the said propeller, and the said respondent would have so done but for the actings and doings of the said libellants and the Mutual Insurance Company of Buffalo, as herein set forth.

23

Thirteenth. And, further answering, the respondent says that the wheat mentioned in the said libel and complaint was shipped on board the said propeller at the same time and in connexion with a certain other quantity of wheat, consisting of ten thousand bushels of the same character and value with that mentioned in the libel, and that the two parcels were not separated, and that the two parcels or quantities of wheat were each of them insured by and in the said The Mutual Insurance Company of Buffalo, and were both consigned to the care of the same person at Buffalo, as the agent of the libellants, of the respective owners and consignees of the said two parcels of wheat; that upon the occurrence of the before-mentioned accident, the person to whom the same were consigned, being the said James D. Sawyer named in the said bill of lading, acting as the agent of the

said libellant and as the agent of the owner of the other parcel, abandoned each separate parcel of wheat to the said insurance company, and the said insurance company did then and there accept the said abandonment of each of the said parcels and quantities of wheat, and thereupon the said insurance company, having accepted the said abandonment, did sell the said wheat which had been so abandoned to it as aforesaid, to a certain person at the city of Detroit, that is
24 to say, one F. N. Phelps, and did then and there require the master of the said propeller to deliver the said wheat from the said propeller to the said purchaser thereof, and thereupon the master of the said propeller did deliver to the said purchaser, at the place of such detention, eight thousand bushels of the said wheat, and upon the arrival of the said propeller at Detroit, within a few days thereafter, the master thereof delivered to the said purchaser the further quantity of eleven thousand and ninety bushels of the said wheat so abandoned, making all of the wheat included in the two shipments in this article mentioned, (of which the wheat in the libel mentioned is part and parcel,) except that eleven hundred bushels of wheat taken from the said two parcels before the said sale by the insurance company had been consummated, had been sent forward to the place of destination by the respondent by another vessel. And, further answering, the respondent says that the wheat mentioned in the libel was part and parcel of the wheat so delivered to the purchaser from the said insurance company, and that the same was so delivered under and by virtue of the said abandonment, with the knowledge, concurrence, and consent of the libellants, and that by reason of the actings and doings aforesaid on the part of the said libellants and of the said
25 Mutual Insurance Company, it was prevented from carrying the said wheat to the place of destination as it otherwise might and could and would have done, and that all the said wheat mentioned in the said libel was so delivered to the said purchaser from the said insurance company, except the proportion of the eleven hundred bushels so forwarded as aforesaid, which was and is about five hundred and fifty bushels, and that the said wheat so forwarded has not been delivered to the said libellants or any other person, for the reason that neither the said libellants nor any other person or persons has paid or offered to pay the freight due to the said respondent under and by virtue of the said contract and bill of lading, nor any part thereof, and that the said respondent has and does retain the same as security for the payment of such freight.

Fourteenth. And the respondent further says, that at the time of the accident to the said propeller hereinbefore mentioned the said trip or voyage had been more than half completed and performed, and that the said wheat had been carried more than half the distance embraced in the said voyage, and that neither at the time of the said abandonment and the acceptance thereof by the said insurance
26 company nor at any other time has the libellants or any other person or persons paid to the respondent or to its officers or agents the freight agreed to be paid for the transportation thereof and in the said bill of lading stipulated and provided for, nor has any

part thereof been paid or offered to be paid. And the respondent in fact further says, that the said abandonment was so made without its consent or knowledge, and solely at the instance of the said libellants, and the same was so accepted by the insurance company without the consent or knowledge of the respondent. And the respondent in fact further says, that in making the delivery of the said wheat to the said insurance company it did not waive or release its right to the payment of the freight stipulated for in the bill of lading, nor to any part thereof; that the delivery of the said wheat to the said insurance company and to the purchaser from and under it was at the request of the said company, and the same was voluntarily accepted by the said insurance company and the said purchaser, and not otherwise.

Fifteenth. And the respondent in fact further says that of the said two parcels of wheat hereinbefore mentioned there remains in the hands of the said respondent eleven hundred and fifty bushels
27 thereof, and that the same is detained by the respondent as security for the payment of the freight upon the said two parcels, so far as the same will go, and that the respondent has no other security for the payment of the said freight.

Wherefore the respondent prays that this honorable court will be pleased to pronounce against the claim of the libellants, and that the said libel may be dismissed with costs.

And the respondent further prays that this honorable court will be pleased to decree, decide, and adjudge that the libellants, by reason of the premises and of the various matters hereinbefore stated, is liable to pay to the said respondent the freight stipulated in the bill of lading in the said libel mentioned, and that the said respondent may have judgment therefor, and that the same may be enforced by process issuing out of and under the seal of this honorable court.

THE WESTERN TRANSPORTATION COMPANY,
By JNO. ALLEN, JR., *President.*

UNITED STATES OF AMERICA, *Northern district of New York:*

On this 10th day of October, 1862, personally appeared before me, John Allen, junior, of the city of Buffalo, in the district aforesaid, and made oath that he is the president of the Western Trans-
28 portation Company, the respondent named in the foregoing answer; that he has read the same, and knows the contents thereof; that the case in this action and the facts stated in said answer are better known to the said deponent than any other officer or agent of the respondent, and that the said answer is true in substance and matter of fact.

P. G. PARKER, *U. S. Commissioner.*

Indorsed: Filed Oct. 20th, 1862.

WM. H. BRADLEY, *Clk.*

Claimant's stipulation.

District court, November term, A. D. 1862.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

Whereas a libel was filed in this court on the day of , A. D. 1862, by the Chicago Fire and Marine Insurance Company against the propeller Mohawk, her engines, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned; and whereas a claim has been filed in the said cause by the Western Transportation Company, and the said Western Transportation Company and Bohan S. Shepard, its surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or their surety, execution may issue against their goods,
29 chattels, and lands for the sum of two hundred and fifty dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all such costs as shall be awarded against it by this court, or, in case of appeal, by the appellate court.

THE WESTERN TRANSPT. CO.,
By JON. W. TUTTLE, *Agent.*
BOHAN S. SHEPARD.

Taken and acknowledged this 18th day of October, A. D. 1862, before me.

NORTHERN DISTRICT OF ILLINOIS,
State of Illinois, Cook county, City of Chicago, ss:

Bohan S. Shepard, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all debts and liabilities.

BOHAN S. SHEPARD.

Sworn this twentieth day of October, A. D. 1862, before me. Witness my hand and notarial seal.

CHARLES A. GREGORY, *Notary Public.* [SEAL.]

30 Indorsed: Filed Oct. 20th, A. D. 1862.
WM. H. BRADLEY, *Clerk.*

On this day, to wit, the fifteenth day of June, in the May term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

Record entry.

CHICAGO MARINE AND FIRE INSURANCE COMPANY
vs.
PROPELLER MOHAWK. } Libel.

Now come the parties, by their proctor, and thereupon comes on to be heard the motion of the respondent on affidavit filed to dismiss

this cause; after argument, the court takes said motion under advisement.

On the next day, to wit, the sixteenth day of June, in the year and the term of said court last aforesaid, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

Record entry.

CHICAGO MARINE AND FIRE INSURANCE COMPANY
v.
PROPELLER MOHAWK. } Libel.

30½ The court having considered, and being now fully advised, on the motion heretofore submitted to dismiss this cause, overrules the same.

On this day, to wit, the twenty-second day of June, in the May term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

CHICAGO MARINE AND FIRE INSURANCE COMPANY
v.
PROPELLER MOHAWK. } Libel.

31 On motion of the libellant's proctor, R. Rae, esq., leave is given to amend the libel.

On this day, to wit, the twenty-third day of June, A. D. 1863, came said libellant, by R. Rae, esq., its proctor, and filed in said clerk's office its amendment to libel; which said amendment is in the words and figures following, to wit:

Amendment.

U. S. dist. court, N. dis. of Ills., in admiralty.

CHICAGO FIRE AND MARINE INS. CO.
v.
PROPELLER MOHAWK. } Amendment to libel.

Libel amended so as to insert in the 4th line of article 2d of said libel, before the words "ten thousand," the words "the said propeller then being a common carrier."

R. RAE, *Proctor for Libellant.*

Indorsed: Filed June 23d, 1863.

WM. H. BRADLEY, *Clerk.*

Libellants' testimony.

Deposition of Jeremiah S. Sanders, taken at Detroit, in the State of Michigan, on the second day of May, A. D. 1863, before George W. Wolverton, notary public, in behalf of libellant; which is as follows, to wit:

32 I reside in the village of Newport, St. Clair county, Michigan. I am thirty-six years of age. My profession is that of United States buoy tender and pilot at the St. Clair flats. I know the St. Clair flats. I have been in the business of piloting propellers, tugs, and vessels of all kinds over said flats for the period of six years. I cou-

sider myself every way competent to judge of the proper and safe tracts of channel through which vessels should pass. I was well acquainted with the channel of the St. Clair flats on the 1st of November, A. D. 1860, and I knew the propeller Mohawk at that time, and knew pretty nearly how she could safely navigate the channel at that time. I was on board of her at the time she grounded, acting as pilot. Captain of the propeller, Captain Pheatte, and I stood on the pilot-house alone. The schooner Harriet Ross, about 600 feet from the lower end of the channel, lay at anchor across the channel. She was not sunk there, but waiting for a tug, which soon after arrived and towed her away. The wind caused her to trend across the channel. I advised the captain of the propeller Mohawk to run down his propeller slowly against the schooner Harriet Ross, and push her out of the way, as there was not sufficient depth of water to go round the
33 schooner. Captain Pheatte insisted that there was water enough, and in making the attempt grounded. This happened on the St. Clair flats, about the 1st of November, 1860, about 1 o'clock a. m. The propeller while aground, and some two hours after, exploded her boiler and afterwards sunk. It was through no carelessness of mine. I knew the channel perfectly at the point where the schooner lay, and was satisfied that the propeller was running great danger by attempting to go round as she did.

JEREMIAH S. SANDERS.

Sworn and subscribed before me this second day of May, A. D. 1863.

[SEAL.] GEO. W. WOLVERTON, *Notary Public.*

Indorsed: Filed May 6th, 1863.

WM. H. BRADLEY, *Clk.*

Opened for Mr. Rae, proctor, June 6th. 1863.

WM. H. BRADLEY, *Clk.*

The deposition of John W. Strong, taken at Detroit, Michigan, on the twenty-second day of January, A. D. 1863, before R. Rae, commissioner on behalf of libellants. Said deposition, together with the stipulation thereto attached, is in words and figures following, to wit:

34 DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, *ss:*

CHICAGO MARINE AND FIRE INSURANCE COMPANY }
vs.
THE PROPELLER MOHAWK. }

Deposition of John W. Strong, of Detroit, a witness produced and sworn at Detroit on Thursday, the 22d of January, 1863, on behalf of the libellants.

And the said John W. Strong saith that he is an insurance agent at Detroit, and has been for the last ten years; knows the propeller Mohawk, and knew her in the year 1860; knew that a disaster occurred to her in the forepart of November, 1860, whereby she was sunk on the St. Clair flats. On or about the 11th of November

1860. I received instructions from the Mutual Insurance Co. of Buffalo, of which I am agent, to sell the cargo of the propeller Mohawk as she lay sunk on the flats. About that time I made sale of it to F. E. Phelps, for the sum of twelve hundred dollars. After the sale I received advices from the Mutual Insurance Company of Buffalo not to sell, as there was a difficulty or some question as to the freight. I was about to cancel the sale when the captain and Mr. Bryant, managing agent of the line of propellers, came into my office, and
35 the question of the freight was discussed between us. I told them I should cancel the sale of the cargo if they insisted upon freight. They made inquiry what it was sold for, and replied "it was too good a sale to be lost," and "we will recognize it as a sale for the benefit of all concerned, as acting for us." The consummation of the sale was made after this conversation. The cargo on board was not delivered until long after this, for the reason that the lighter had started only about an hour or two at most before this conversation took place. The final sale was made by me, acting by advice and instruction of Mr. Bryant and captain of the propeller. After I had determined to revoke the sale originally made by me, under instructions from Mr. Eustaphieve, sec'y of the Mutual Insurance Company of Buffalo, and the sale finally stood, as by agreement, for the benefit of all concerned, to F. E. Phelps, and not for the benefit of the Buffalo Mutual. This final consummation of the sale was made under the orders of the captain and Mr. Bryant, the agent of the Western Transportation Company, and not under orders from any one else. The telegraph hereto appended contained the order given to me, and which I followed as I was directed.

36 No. 1.] WESTERN UNION TELEGRAPH COMPANY.
Det., Nov. 13th, 1860.

To J. W. Strong, [by telegraph from Buffalo, 13, 1860:]

Have nothing to do with grain on Mohawk unless owners of vessel relinquish all claims for freight. Write to-day. Tell them to take it to Buffalo if they want freight. 30 w., 1 45, p'd.

A. A. EUSTAPHIEVE.

I was instructed by Mr. Bryant to hold the money arising from the avails of sales, but no collection of it was ever made by me. I took the note from F. E. Phelps, and sent it to Buffalo to Mr. Eustaphieve, I think, but cannot swear positively.

Cross-examined by G. C. Bates, esq., for respondent:

The note for the sale I do not think was given until some days after the sale. I think I saw the captain of the Mohawk and Mr. Bryant the next day after I had agreed with Mr. Phelps to sell him the grain. I remember now that on the 12th of November I enclosed the note of Phelps to Mr. Eustaphieve, sec'y of the Mutual Insurance
of Buffalo, informing him "that I had sold the balance in the
37 Mohawk as she now lies sunk on the flats."

J. W. STRONG.

Sworn and subscribed before me, by consent, this 22d day of Jan., A. D. 1863, at Detroit.

R. RAE, *U. S. Com'r.*

Stipulation as to tender.

United States district court, northern district of Illinois, in admiralty.

THE CHICAGO FIRE AND MARINE INSURANCE Company *ag'st* THE PROPELLER MOHAWK.

It is stipulated that the Mutual Insurance Company of Buffalo, on or about the 25th day of December, 1861, tendered to the respondent, at the city of Buffalo, an amount equal to fifteen cents a bushel on the wheat brought to Buffalo, which amounted to 1,000 bushels, and a sum in addition, to cover the general average charges, amounting to $160, and demanded the delivery of the said wheat to it, the said Insurance Company of Buffalo; the defendant refused the tender and to deliver the wheat, on the ground that it was entitled to freight on the entire shipment, in full or pro rata.

R. RAE, *Proctor for Libellant.*
JOHN HUBBELL, *Advocate.*

38 Indorsed: Filed July 16th, 1863.

WM. H. BRADLEY, *Cl'k.*

Respondent's testimony.

The depositions of John W. Strong and Francis E. Phelps, taken at Detroit, in the State of Michigan, on the sixth day of July, A. D. 1863, before Thomas S. Blackmar, commissioner on behalf of respondent. Said depositions, together with exhibits thereto attached, are as follows, to wit:

And the said John W. Strong, being about the age of forty-seven years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy aforesaid. I did carefully examine the said John W. Strong, and he did, thereupon, depose, testify, and say as follows, viz:

I reside in Detroit, Michigan. I have been examined in this cause before. I am the person who is the agent in Detroit of the Mutual Insurance Company of Buffalo. It appears from my letter-book that the sale of the wheat on the Mohawk mentioned in my former
39 deposition was made to F. E. Phelps, on November twelfth, 1860, and I suppose that I received his note for the wheat on that day. The letter so states. On that day I advised the Mutual Insurance Company of the sale and of the enclosure of the note of the company. On the same day I wrote an order for the grain, which was signed by the captain of the Mohawk, but not by me. The counsel for the respondent here produces the paper, which is hereto annexed,

marked Exhibit A, about which the witness says: This paper is a true and correct copy of that order. The original is annexed to my deposition this day made, in a cause pending in this court wherein David Dows and Ammi Dows are libellants, and the propeller Mohawk, her boats, tackle, apparel, and furniture are respondents, and the Western Transportation Company is claimant.

The paper hereto annexed, marked Exhibit B, is here produced by the respondent's counsel, and shown to the witness, about which he says:

This paper is a true and correct copy of a telegraphic despatch received by me on November thirteenth, 1860, from A. A. Eustaphieve, who was the secretary of the Mutual Insurance Company of Buffalo.

The original message is annexed to a deposition this day made
40 by me in a cause pending in this court, and above referred to by me, wherein David Dows and Ammi Dows are libellants, and the Propeller Mohawk, her boats, tackle, apparel, and furniture are respondents, and the Western Transportation Company is claimant. On the day of the date of the telegraph annexed to my former deposition in the cause just mentioned by me, I received said telegraph so annexed to said former deposition, and which message requested me to have nothing to do with the grain on the Mohawk. On receipt of the other message by telegraph, the copy of which is hereto annexed, marked Exhibit B, the grain had not been delivered to Phelps on captain Pheatt's order, and I saw the captain, and Mr. Bryant acting with him, but I do not know for whom, and asked them the question about the freight. They said they should insist on all the freight they were entitled to. I then told them that if they did not abandon the freight I should cancel the sale. They said it was too good a sale to be lost, and that they would recognize it as a sale for the benefit of all concerned. I cannot state which of them made that remark. They were together and acted in concert. I cannot particularize what was said by the captain of the Mohawk, or
41 Mr. Bryant. I did not know, of my own knowledge, of Mr. Bryant's connexion with the Western Transportation Company. I was informed that some one was coming to act for the company, and when Mr. Bryant came he acted in that capacity. I am not certain whether I received any instructions from Mr. Eustaphieve, in reference to cancelling the sale except what is contained in the telegraph annexed to a former deposition made by me, and hereinbefore mentioned. After receiving that telegraph I saw Mr. Phelps, and found that the lighter had just left the dock with men to go to the Mohawk to take off the grain. I informed him that I might want to send for the lighter back again, or cancel the sale, I do not recollect which. My recollection of that conversation is very vague and indefinite. I supposed the whole matter was ended long ago, and therefore did not charge my memory with it. I do not recollect that anything else was said between Phelps and myself at that time about cancelling the sale. I do not recollect that anything was said between Bryant, the captain of the Mohawk, and myself in reference to this business, ex-

cept what I have already stated. In my former deposition
42 where I speak of the consummation of the sale, and of the final sale having been made by me, acting upon the advice of Mr. Bryant and the captain of the propeller, and in stating that the sale finally stood, as by agreement, for the benefit of all concerned, and not to the benefit of the Buffalo Mutual, I mean to be understood as giving my opinion, based upon the facts already stated by me. As far as I can recollect I have given all the facts relating to this transaction. I had known Harvey D. Pheatt, as master of the propeller Mohawk. I had no personal acquaintance with Mr. Bryant up to that time, but knew him by reputation. He appeared to act with authority in this business. I knew nothing of his connexion with the Western Transportation Company until I met him on this occasion.

J. W. STRONG.

And also the said Francis E. Phelps, being about the age of sixty-four years, and having been by me first cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy aforesaid, I did carefully examine the said Francis E. Phelps, and he did thereupon depose, testify, and say as follows, viz:

I reside in Detroit, Michigan, and resided there in Novem-
43 ber, 1860. I know John W. Strong, agent in Detroit of the Mutual Insurance Company of Buffalo. On, or a day or two before, November 12th, 1860, I purchased of him the balance of the cargo of wheat then on the propeller Mohawk. The propeller had met with an accident, having exploded her boiler or something of that sort, and she was then on the St. Clair flats.

The consideration of that purchase was twelve hundred dollars, I think. I speak from memory, but that was the price, I am quite sure. I gave a note at thirty or sixty days for the purchase-money. I delivered the note to Mr. Strong, but do not recollect certainly for what company it was delivered. I received evidence in writing from him of the sale. The paper hereto annexed, marked Exhibit C, is here produced by the witness, about which he says:

This is a true and correct copy of the paper delivered to me by Mr. Strong, on that sale. I have the original in my possession, but am unwilling to part with it, for the reason that I may wish to use it in subsequent business transactions.

After receiving the certificate of purchase of which this paper, Exhibit C, is a copy, I sent a steamer up after the wheat. It was necessary for the captain of the steamer or lighter which I
44 sent to have an order for the wheat. I sent him to Mr. Strong for the order, or, at any rate, I took such steps that the order was procured from the captain of the Mohawk, and I afterwards learned that the order was all right.

The steamer or lighter which went up for me to the Mohawk, took off one or two loads, and then towed the Mohawk down to Detroit with the balance of her cargo on board. She was engaged in that business either five or six days, I am not certain which.

After the Mohawk was towed down to Detroit, I sent a portion o her cargo down to Buffalo on board her.

I do not recollect that anything was said to me by Mr. Strong or any one else about cancelling the sale after I had made the purchase. There was no conversation on that subject to my recollection, and I am very sure I should have remembered it had there been any. There was nothing said to me, to my recollection, about sending for the steamer or lighter and bringing her back. I do not think any such thing occurred, for to my recollection there was never anything said or done about cancelling or breaking off the sale. The Mutual Insurance Company of Buffalo, after that sale to me, sued me on the note which I gave in payment for the wheat. The company afterwards demanded and collected of me one hundred dollars and upward, in addition to the purchase-money to be paid by me for the wheat. I do not recollect the precise nature of the charge, but they claimed it as a general average or something of that kind, and finally I paid it.

F. E. PHELPS.

Exhibit A, Thomas S. Blackmar, commissioner.

DETROIT, *Nov. 12th*, 1860.

The Mutual Ins. Co., of Buffalo, have sold Mr. F. E. Phelps the remaining grain in the Mohawk. You will therefore let him or his agents go on and take it.

(Signed) H. D. PHEATT.

Exhibit B, Thomas S. Blackmar, commissioner.

DET., *Nov. 13th*, 1860.

To Jno. W. Strong, [by telegraph from Buffalo, 13, 1860 :]

Yours of twelfth (12) rec'd. Sale of grain all right.

(Signed) A. A. EUSTAPHIEVE.

Exhibit C, Thomas S. Blackmar.

DETROIT, *Nov. 12th*, 1860.

This to certify that the Mutual Insurance Company of Buffalo has this day sold to F. E. Phelps the balance of grain on the propeller Mohawk, as she now lies sunk on the flats of Lake St. Clair.

(Signed) J. W. STRONG, *Agent.*

Indorsed : Filed July 8th, 1863.

WM. H. BRADLEY, *Clerk.*

Opened for Mr. Rae, proctor, July 8th, 1863.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the tenth day of July, A. D. 1863, said parties, by their proctors, filed in said clerk's office their stipulation in said cause, which said stipulation is in the words and figures following, to wit :

Stipulation as to admitted points.

United States district court, northern district of Illinois, in admiralty.

DAVID DOWS and AMMI DOWS
vs.
The PROPELLER MOHAWK, her boats, etc.

THE CHICAGO FIRE AND MARINE INS. CO.
vs.
The same.

47 The following points are to be admitted on the trial of this action, for the purposes of such trial:

First. That the Chicago Fire and Marine Insurance Company, one of said libellants, and this respondent are corporations as stated in the libel and answers. That said propeller, being in good and seaworthy condition, left the port of Chicago upon the alleged voyage, and after the same had been more than half completed and performed in safety, and while so engaged in the prosecution of said voyage grounded upon St. Clair flats; and in the efforts to get off, the said propeller became disabled by the bursting of her boiler, and was thereby compelled to suspend the further prosecution of the said voyage, until said propeller could be gotten off, and the necessary repairs could be made. This disaster occurred thirty miles from Detroit, in the state of Michigan, on the 9th day of November, 1860, and all the wheat except eleven hundred bushels was damaged by the sinking of the propeller. That upon information of said disaster reaching Buffalo, the agent of the owner of said wheat immediately abandoned the same to the Mutual Ins. Co. of Buffalo, said
48 company having insured the same against loss or damage on said voyage by reason of the danger or risk of navigation and other dangers mentioned in said policy.

The Mutual Ins. Co. of Buffalo accepted the abandonment so made, and paid the loss to the owner of the wheat. The propeller was got off after some time, but as to what the length of time, either party may offer further proof, and subsequently was towed to Buffalo in a disabled condition, before the close of navigation for that year, which closed about the middle of December.

No part of the freight on the wheat has been paid or tendered by the shippers or owners thereof, or by the Mutual Ins. Co. of Buffalo, or any other person or persons except as hereinafter mentioned. At the time the same was delivered to and taken by Phelps, no offer to pay the freight or any part of it was made by him or any other person or persons, and that, at the time, no freight was demanded of said Phelps.

Nineteen thousand and ninety (19,090) bushels of wheat were delivered on the flats and at Detroit to Phelps, who became the purchaser, and who gave his note to the Mutual Ins. Co. for the purchase-money.

49 Eleven hundred (1,100) bushels were transported to Buffalo in good order, and the libellants tendered full freight on the same,

and all other lawful charges, which included fifteen cents freight and general average charges, but refused to pay any pro rata or full freight on said wheat delivered on the flats or at Detroit. Respondents refused to deliver said eleven hundred (1,100) bushels, but still retain the same as aforesaid. The note taken for the sale of the damaged wheat at the flats and Detroit was taken by and held in the possession of the Mutual Ins. Co. of Buffalo, and by them put in judgment.

It is stipulated as to the evidence taken in the cause, and the stipulation shall apply to both cases, that either party is at liberty to take further proof as to any of the matters in issue, whether mentioned in this stipulation or otherwise, but no proof contrary to this stipulation.

ROB'T RAE, *Proctor for Libellant.*
BATES & TOWSLEE, *Proctors for Respondent.*

Indorsed: Filed July 10th, 1863.

WM. H. BRADLEY, *Clerk.*

50 On this day, to wit, the sixteenth day of July, in the July term of A. D. 1863 of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

Record entry.

CHICAGO FIRE AND MARINE INSURANCE COMPANY
v.
PROPELLER MOHAWK. } Libel.

Now come the parties, by their proctors, and thereupon comes on to be heard this cause, on the libel, answer, and proofs on file, and after hearing the evidence and the arguments of advocates, the court takes the same under advisement.

51 On this day, to wit, the thirtieth day of September, in the July term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

Record entry.

THE CHICAGO MARINE AND FIRE INSURANCE Company
vs.
PROPELLER MOHAWK. } Libel.

Now come the parties, by their proctors, and the court having considered and being now fully advised upon the matters heretofore submitted, herein pronounces for the respondent.

It is thereupon considered and adjudged by the court that the libel be dismissed without prejudice, at the costs of the libellant, and that the respondent have and recover of the libellant its costs about its defence in this behalf expended, to be taxed, and that execution issue therefor against the said libellant and its stipulator, and the libellant prays an appeal to the circuit court.

52 On this day, to wit, the third day of October, A. D. 1863, came said libellant, by its proctor, and filed in said clerk's office its appeal and bond in said cause, which said appeal and bond are in the words and figures following, to wit:

Appeal.

THE CHICAGO FIRE AND MARINE INSURANCE CO.
vs.
THE PROPELLER MOHAWK, Western Transportation Co., claimants.

DAVID and AMEI DOUSE *et al.*
vs.
The same.

Circuit court of the United States for the northern district of Illinois.

The appeal of the abovenamed appellants respectfully showeth: That on or about the 20th day of October, 1862, the abovenamed libellants, the Chicago Fire and Marine Insurance Company and David and Amei Dowse and John D. Muir, trading as D. and A. Dowse & Co., exhibited their libel in the district court of the United States for the northern district of Illinois against the appellants, each claiming over fifty dollars, praying, among other things, for the reason set
53 forth in the libel, that these appellants might be condemned to pay the demands of said libellants, the libel having been consolidated by order of the honorable district court, and amended. That process issued out of said court having been served on the respondents, and they having filed their separate answers to said libels in said district court praying that the said libel be dismissed, with the costs in that behalf, as by reference to said libel and the said answers may more fully appear, that the said cause came on to be heard before the honorable Thomas Drummond, judge of the said district court, on or about the 10th day of July, A. D. 1863, upon the depositions and proofs taken in said cause and the testimony and proofs adduced by the respective parties, and the judge having advised thereon, on the 30th day of September, A. D. 1863, made a decree or sentence in said court whereby it was, among other things, sentenced and decreed that the libels filed in this cause be dismissed without prejudice.

And these libellants are advised and insist that these decrees are erroneous, inasmuch as the libellants were entitled to a decree in the premises for the damage claimed in said libel. And the ap-
54 pellants, for these and other reasons, appeal from the whole of the said decree in favor of said respondents to the present circuit court, as per stipulation, to be held in the said district, to have the , and on the said appeal they intend to make more allegations, and introduce the same and other proofs to be introduced to the said circuit court; and they pray that the said decree and every part thereof may be reversed, with cost; and such other decree therein made as to the said circuit court shall seem just, and that the said

appellees be condemned to pay to these appellants their costs and damages in the premises.

R. RAE, *Proctor for Libellants.*

Indorsed: Filed Oct. 3, 1863.

WM. H. BRADLEY, *Clerk.*

Appeal bond.

Whereas an appeal has been taken to this court from the district court of the United States in the northern district of Illinois in a certain cause wherein the Chicago Fire and Marine Insurance Company and David and Amei Dowse and are libellants, against the Propeller Mohawk, her boats, &c., the Western Transportation Company are claimants, and the said appellants have been ordered to give security in the sum of five hundred dollars for the payment
55 of all damages and costs on the appeal to this court and to the Supreme Court:

Now, therefore, the stipulators undersigned hereby stipulate in the said sum of five hundred dollars, to pay all damages and costs on the appeal in this court and in the Supreme Court, in case such appeal shall intervene.

JOSHUA BARRELL.
SILAS PRATT.

Taken and acknowledged this 2d day of Oct., 1863.

S. RAE, *U. S. Com'r.*

U. S. A., *Northern district of Ill's, ss:*

Silas Pratt, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth $1,000 over all his debts and liabilities.

SILAS PRATT.

Sworn and subscribed before me this 2d day of Oct., A. D. 1863.

R. RAE, *U. S. Com.*

Bail approved.

BATES & TOWSLEE, *Proctors for Def't.*

Indorsed: Filed Oct. 3d, 1863.

WM. H. BRADLEY, *Clerk.*

56 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, hereby certify the foregoing to be a true and correct transcript of the record of the district court of the United States for said district, in the cause wherein the Chicago Marine and Fire Insurance Company is libellant, and the Propeller Mohawk is respondent, made up pursuant to the fifty-second rule in admiralty of the Supreme Court of the United States, as the same remains in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, at my office, in Chicago, in said district,

this twelfth day of October, A. D. eighteen hundred and sixty-three, and of our independence the eighty-eighth year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Indorsed: Filed Oct. 12th, 1863.

WM. H. BRADLEY, *Clerk.*

57 NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that, on the twelfth day of October, in the year of our Lord one thousand eight hundred and sixty-three, came David Douse, Ammi Douse and John D. Muir, libellants, by Robert Rae, esq., their proctor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their transcript of a record from the district court of the United States for the northern district of Illinois, in admiralty, which said transcript is in the words and figures following, to wit:

58 Pleas in the district court of the United States for the northern district of Illinois, before the Hon. Thomas Drummond, judge of the district court aforesaid, and on Wednesday, the thirtieth day of September, in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth year.

WM. H. BRADLEY, *Clerk.*

DAVID DOUSE and AMMI DOUSE and JOHN D. MUIR *vs.* PROPELLER MOHAWK. } Libel.

Be it remembered that, on the first day of August, in the year of our Lord one thousand eight hundred and sixty-two, said libellants, by R. Rae, esqr., their proctor, came into the clerk's office of the district court, for the northern district of Illinois, and filed their

59 stipulation for costs, together with their libel, which read in the words and figures following, to wit:

Libellants' stipulation.

District court.—Sept. term, A. D. 1862.

UNITED STATES OF AMERICA, *Northern district of Illinois:*

Whereas a libel was filed in this court on the 1st day of Aug., A. D. 1862, by David Douse *et al.* against the Propeller Mohawk, her machinery, &c., boats, tackle, apparel, and furniture, for the reasons and causes in said libel mentioned, and praying that the same may be condemned and sold to answer the prayer of the libellant; and the said libellants and Jonathan Benells and Robert Rae, surety, the parties hitherto, hereby consenting and agreeing that in case of default or contumacy on the part of the libellants or their surety, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars: Now, therefore, it is hereby stipulated and

agreed, for the benefit of whom it may concern, that the stip-
60 ulators undersigned shall be, and are bound, in the sum of two hundred and fifty dollars, conditioned that the libellant above named shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

JOSHUA BARRELL.
R. RAE.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

R. Rae, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all his debts and liabilities.

R. RAE.

Sworn this 1st day of August, A. D. 1862, before me.
P. A. HOYNE, *U. S. Com'r.*

Indorsed: Filed Aug. 1, 1862.
WM. H. BRADLEY, *Cl'k.*

Libel as subsequently amended.

To the honorable Thomas Drummond, judge of the United States district court for the northern district of Illinois, in admiralty:

61 The libel of David and Ammi Douse and John D. Muir, of the city of New York, and doing business under the firm name and style of D. & A. Douse & Co., against the propeller Mohawk, her boilers, machinery, boats, tackle, apparel, and furniture, in a cause of contract and affreightment, civil and maritime, alleges as follows:

First. That the said propeller Mohawk, now lying at Chicago, in the district aforesaid, is a vessel of more than twenty tons burthen, and at the time when the cause of action hereinafter stated and set forth arose was, and is now, enrolled and licensed for the coasting trade and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States, upon the lakes and navigable waters connecting the same.

Second. That on or about the 31st day of October, A. D. 1860, D. & A. Douse & Co., libellants aforesaid, shipped on board the propeller Mohawk, then lying at the port of Chicago, in the State of Illinois,
62 the said propeller then being a common carrier, ten thousand two hundred seventeen and $\frac{45}{60}$ bushels of number one spring wheat, to be transported and conveyed on board of said propeller from the port of Chicago, in the State of Illinois, to the port of Buffalo, in the State of New York, and to be delivered by the said propeller Mohawk safely at said port of Buffalo, to the consignees of said libellant, upon paying the freight of fifteen cents per bushel for each and every bushel so delivered as aforesaid, according to the tenor and effect of the bill of lading made, signed, and delivered by the agent of said propeller Mohawk to said libellants in the premises, a copy of which is hereunto annexed, and which libellants pray may be taken as part of this libel.

Third. That said ten thousand two hundred seventeen and $\frac{45}{80}$ bushels of wheat was, at the time it was delivered by the libellants on board said propeller Mohawk as aforesaid, in good condition, and of the value of about ten thousand two hundred seventeen dollars and seventy-five cents; that said wheat was, at the
63 time of its delivery to said propeller for transportation as aforesaid, the property of libellants, and of the value above stated.

Fourth. That said wheat was not carried and transported by said propeller Mohawk from said port of Chicago to the said port of Buffalo, nor was the same or any part thereof delivered at Buffalo to the consignee of libellants, or to any person or persons for libellants; but, on the contrary, the said wheat, whilst on board of said propeller and in the possession, custody, and care of the officers of said propeller, became and was wholly lost to libellants.

Fifth. That by reason of the said failure of the said propeller Mohawk to deliver said wheat as aforesaid at Buffalo, according to the obligation of said bill of lading, and of her loss aforesaid, libellants have suffered damage to the full amount of the value of said wheat, to wit, the sum of ten thousand two hundred seventeen and $\frac{75}{100}$ dollars, for which the said libellants claim compensation of and from the owner of said propeller Mohawk, but that said owner of said
64 propeller denies any and all liability for and on account of said loss, and refuses to make any satisfaction for said loss, although by libellants often requested so to do.

Sixth. That there is now due and unpaid libellants, from said owner, the sum of ten thousand two hundred seventeen and $\frac{75}{100}$ dollars for and on account of said contract of affreightment.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this honorable court. Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said propeller Mohawk, her boilers, engines, machinery, boats, tackle, apparel, and furniture; and that the said owner and all persons claiming any right, title, and interest in the said propeller Mohawk may be cited to appear and answer upon oath all and singular the matters aforesaid; and that the said vessel may be condemned and sold to pay the amount
65 due the libellants, with interest and costs; and that the libellants may have such other and further relief as in law or justice they may be entitled to receive.

DAVID DOUSE & CO.,
By R. RAE, *Proctor.*
JOSHUA BARREL.

Sworn and subscribed before me this 1st day of Aug., A. D. 1862.
P. A. HOYNE, *U. S. Com'r.*

CHICAGO, *Oct.* 31*st*, 1860.

Shipped in good order and condition by N. K. Fairbank, as agent and forwarder, for account and at the risk of whom it may concern, on board the prop. Mohawk, whereof Pheatt is master, the following

abide and answer the decree of the said court in the aforesaid cause, without fraud or other delay, then the above obligation to be void; otherwise it shall remain in full force and virtue.

THE WESTERN TRANSPORTATION CO., .
By JNO. ALLEN, JR., *P't.* [SEAL.]
DEAN RICHMOND. [SEAL.]
JONATHAN W. TUTTLE. [SEAL.]

71 STATE OF NEW YORK,
Northern district of New York, Erie County:

I hereby certify that on this fifteenth day of August, 1862, before me came the abovenamed Dean Richmond, to me known to be the same person described in and who executed the above bond, and acknowledged that he had executed the same for the purposes therein mentioned; and being by me duly sworn, the said Dean Richmond made oath that he has property in the State of Illinois, and within the northern district thereof, worth forty thousand dollars over and above all incumbrances thereon. And on the same day came before me John Allen, junior, to me known, and made oath that he is the president of the Western Transportation Company, the principal in the foregoing bond, and that the seal affixed thereto is the corporate seal of the said the Western Transportation Company, and was affixed thereto by the authority of the board of directors of said company, and by the like authority he did subscribe the name of the said company thereto, and his own name as president thereof, for the
72 purposes therein expressed.

P. G. PARKER, *U. S. Commissioner.*

Indorsed: Approved.

R. RAE, *Proctor.*

Approved.

THOMAS DRUMMOND.

Filed Oct. 8, 1862.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the 20th day of October, A. D. 1862, came the Western Transportation Company, the respondent herein, and filed its answer to the libel herein, in the words and figures following, to wit:

Respondent's answer.

United States district court, northern district of Illinois, in admiralty.

To the honorable Thomas Drummond, judge of the district court of the United States in and for the northern district of Illinois:

73 The answer of the Western Transportation Company, claimant and respondent, to the libel and complaint of Davis Dows and Ammi Dows, against the propeller Mohawk, her boilers, boats, tackle, apparel, and furniture, exhibited and filed in this court, in a cause of contract, civil and maritime, alleges and propounds as follows:

First. That it, the said respondent, is a corporation created, organized, and existing under the laws of the State of New York, and now is, and was at the several times in the said complaint mentioned, the owner of the said propeller Mohawk, her engine, boats, tackle, apparel, and furniture.

Second. And as to the several matters and things stated and charged in the first article of said libel, the respondent admits that the said propeller was, at the several times in the said libel mentioned, enrolled and licensed for the coasting trade on the lakes, and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States and the navigable waters connecting the same.

74 Third. And as to the several matters and things stated and charged in the second article of the said libel, the respondent denies the same, and each and every part thereof, in manner and form as the same are therein stated and charged, except in so far as the same are hereinafter admitted to be true, or are consistent with the facts hereinafter stated.

Fourth. And as to the several matters and things in the third article of the said libel stated and charged, the said respondent admits that on or about the day mentioned in said libel there was delivered on board the said propeller Mohawk, for transportation from Chicago to Buffalo, ten thousand two hundred and seventeen and $\frac{45}{60}$ bushels of wheat, at the freight of fifteen cents per bushel; that the same was in good condition and of value of about ten thousand two hundred seventeen and $\frac{75}{100}$ dollars; and as to each and every other matter or thing in the said third article stated and charged, the respondent denies the same in manner and form as the same are therein stated and set forth.

75 Fifth. And as to the several matters and things in the fourth article of the said libel stated and charged, the respondent admits that the wheat was not carried from Chicago to Buffalo, nor was the same delivered at Buffalo to the consignee of the libellants, or to any person or persons at Buffalo for the libellants; but the respondent denies that the said wheat, or any portion thereof, became lost to the libellants while on board the propeller and in the possession, custody, and care of the officers of the said propeller. On the contrary thereof, the respondents say that the said propeller and the officers thereof were prevented from carrying the said wheat to the place of destination, and there delivering the same, by the act of the said libellants, as is hereinafter particularly stated and set forth. And that the officers of the said propeller delivered all of said wheat at a place short of destination, to a person claiming and having title thereto from and through the libellants, and that such delivery was so made with the knowledge, consent, direction, and concurrence of the said libellant.

76 Sixth. And as to the several matters and things in the fifth article of said libel contained, the respondent denies the same, and each and every part thereof, in manner and form as the same are therein stated and set forth, except that it denies any

and all liability for said pretended loss, and refuses to make any satisfaction therefor to the libellants.

Seventh. And as to the several matters and things in the sixth article of said libel stated and charged, the respondents deny the same, and each and every part thereof, in manner and form as the same are therein stated and charged.

Eighth. And as to the several matters and things in the seventh article of said libel contained, the respondents deny the same, and each and every part thereof, in manner and form as the same are therein stated and set forth.

Ninth. And, further answering the said libel and complaint, the respondent says that the wheat mentioned in the said libel, and in the bill of lading therein set forth and referred to, was, on or about the day mentioned in the said libel, shipped on board the said propeller Mohawk, which was then lying at Chicago aforesaid and destined
77 on a trip or voyage from Chicago to Buffalo, by one Frederick N. Bronson, who was then the owner thereof, under a certain contract of affreightment then and there made between the said Bronson and the said respondent, its officers and agents at Chicago, in and by which said contract the said respondents undertook and agreed to carry and transport the said wheat on board the said propeller from Chicago to Buffalo at the rate of freight specified in the bill of lading set forth in the said libel, and there deliver the same to the said Bronson, or to his order or assigns, upon payment of the freight and charges agreed to be paid therefor, dangers of navigation, fire, and collision excepted. That one N. K. Fairbanks, of the city of Chicago, having made certain advances of money to the said Bronson, either upon his own account as principal or on account of said libellants, and which the said respondents are unable to state, it was then and there agreed by and between the said Bronson and the said Fairbanks that he, the said Fairbanks, or the person or persons on whose account such advances were made, should have a lien upon and control of the said wheat for the purpose of securing the re-
78 payment of such advances; and thereupon the bill of lading in this libel set forth was, by the direction of the said Bronson, made out and delivered to the said Fairbanks as security for such advances, and not otherwise; in order that he, the said Fairbanks, or the parties on whose account such advances had been made, might control the property or the avails thereof for the purpose of such security. And the said respondents, further answering, say that the advances so made by the said Fairbanks and the said libellants have been and were fully paid to the said libellants before the commencement of this said suit, and that the interest of the said libellants in and to the said wheat was terminated before the commencement of this suit.

Tenth. And, further answering the said libel and complaint, the respondent says that upon the said shipment having been so made as stated and set forth in the ninth article of the answer, the said Bronson caused and procured the wheat to be insured against the perils and dangers of navigation upon the said trip or voyage from
79 Chicago to Buffalo aforesaid, by and in The Mutual Insurance

Company of Buffalo, a corporation created under the laws of the State of New York and duly authorized to make insurance of this and like character, and directed the loss, if any there should be, to be paid to the said D. & A. Dows & Co., all of which was done as further security for the advances in the ninth article of this answer mentioned and referred to.

Eleventh. And, further answering, the respondents say that the said propeller Mohawk, on or about the thirty-first day of October, one thousand eight hundred and sixty, left the said port of Chicago for Buffalo aforesaid, on her said trip or voyage, being then in all respects tight, staunch, strong, and in all respects seaworthy, and while in the successful prosecution of her said voyage, on the evening of the sixth of November, one thousand eight hundred and sixty, was, by the perils and dangers of navigation and not otherwise, and without fault on the part of the said propeller, her officers or crew, or any or either of them, stranded or grounded upon St. Clair flats, and

81 and then and there became temporarily disabled by reason of and consequence of such stranding, and was compelled to suspend the further prosecution of the said voyage for the time being, and until the necessary repairs to enable the said propeller to proceed upon and to complete her said voyage could be made. And, further answering, the said respondents say that the person named in the said bill of lading, to whose care the said wheat was consigned at Buffalo, that is to say, the said James D. Sawyer, acting as the agent of the said libellants and of the said Bronson, immediately upon being informed of the accident and detention of the said propeller, as hereinbefore mentioned, did, for and on account of said libellants, and for and on account of the owners of the said wheat, whose interest was covered by the insurance hereinbefore mentioned, abandon the same to the insurers thereof, that is to say, to the said The Mutual Insurance Company of Buffalo, and claimed as for a total loss under the said insurance so made as aforesaid; and

82 thereupon the said insurers, that is to say, the said The Mutual Insurance Company of Buffalo, did then and there accept the said abandonment so made as aforesaid, and did then and there pay to the said libellants, and to the said Bronson, the amount for which the said wheat was so insured as aforesaid, and the said The Mutual Insurance Company of Buffalo, became and was the owner of the said wheat mentioned in the said libel and on the bill of lading therein set forth. And thereupon the said The Mutual Insurance Company of Buffalo did, with the assent of the said libellants and of the said Bronson, assume to be the owners of the said wheat, and each and every part thereof. And the said respondents further say, that from and after the said abandonment and the acceptance thereof, the said propeller and the officers thereof, and the said respondents, held the said wheat as the bailees of the said The Mutual Insurance Company of Buffalo, and did thereafter deliver to it, the said The Mutual Insurance Company of Buffalo, the wheat mentioned in the said bill of lading, and each and every part thereof, excepting as hereinafter

stated, all of which was well known to the said libellants, and
83 all of which was done with the knowledge, consent, concurrence, and approbation of the said libellants and of the said Bronson.

Twelfth. And, further answering, the said respondents say that the detention of the said propeller in consequence of the said accident and misfortune was of a temporary character, and that within a few days after the said occurrence the said propeller was got off and taken to Detroit, a distance of about thirty miles from the place of the accident, and was subsequently taken from Detroit to Buffalo, where she arrived before the close of navigation for the then present season, and within two weeks from the time of the accident.

And the respondent further says, that the place of the accident and detention was directly in the track of all vessels engaged in navigating the lakes between the port of Detroit and the upper lakes, and that the said wheat, all of which remained on board the said propeller, could have been readily transhipped and sent forward to Buffalo by other vessels in case it should have been found impracticable to have sent the same forward on the said propeller, and the
84 said respondents would have so done but for the actings and doings of the said libellants and the said The Mutual Insurance Company of Buffalo as herein set forth.

Thirteenth. And, further answering, the respondents say that the wheat mentioned in the said libel and complaint was shipped on board the said propeller at the same time and in connexion with a certain other quantity of wheat, consisting of ten thousand two hundred and seventeen and $\frac{45}{60}$ bushels of the same character and value with that mentioned in the libel, and that the two parcels were not separated; that the two quantities or parcels were each of them insured by and in the said The Mutual Insurance Company of Buffalo, and were both consigned to the care of the same person at Buffalo, as the agent of the respective libellants and of the owners and consignees of the said two parcels of wheat.

That, upon the occurrence of the before-mentioned accident, the person to whom the same were consigned, being the said James D. Sawyer named in the said bill of lading, acting as the agent of
85 the said libellants, and as the agent of the owner of the other parcel, abandoned each separate parcel of wheat to the said insurance company, and the said insurance company did then and there accept the said abandonment of each of the said parcels and quantities of wheat; and thereupon the said insurance company, having accepted the said abandonment, did sell the said wheat which had been so abandoned to it as aforesaid to a certain person in the city of Detroit, that is to say, to one F. W. Phelps, and did then and there require the master of the said propeller to deliver the said wheat from the said propeller to the purchaser thereof, and thereupon the master of the said propeller did deliver to the said purchaser, at the place of such detention, eight thousand bushels of the said wheat, and upon the arrival of the said propeller at Detroit, within a few days thereafter, the master thereof delivered to the said

purchaser the further quantity of eleven thousand and ninety bushels of the said wheat so abandoned, making all of the wheat in-
86 cluded in the two shipments in this article mentioned, (of which the wheat in the libel mentioned is part and parcel,) except that eleven hundred bushels of wheat, taken from the said two parcels before the said sale by the insurance company had been communicated to the respondents, had been sent forward to the place of destination by the respondents by another vessel. And, further answering, the respondents say that the wheat mentioned in the libel was part and parcel of the wheat so delivered to the purchasers from the said insurance company, and that the same was so delivered under and by virtue of the said abandonment, and with the knowledge, concurrence, and consent of the libellants; and that by reason of the actings and doings aforesaid on the part of the said libellants, and of the said insurance company, it was prevented from carrying the said wheat to the place of destination, as it otherwise might, and could, and would have done; and that all of the said wheat mentioned in the said libel was so delivered to the said purchasers from
87 the said insurance company except the proportion of the eleven hundred bushels so forwarded as aforesaid, which was and is about five hundred and fifty bushels, and that the said wheat, so forwarded, has not been delivered to the said libellants, for the reason that neither the said libellants, nor any other person or persons, has paid, or offered to pay, the freight due to the said respondents under and by virtue of the said contract and bill of lading, nor any part thereof, and that the said respondents have and do detain the same as security for the payment of such freight.

Fourteenth. And the respondents further say, that at the time of the accident to the said propeller hereinbefore mentioned, the said trip or voyage had been more than half completed and performed, and that the said wheat had been carried more than half the distance embraced in the said voyage, and that neither at the time of the said abandonment and the acceptance thereof by the said insurance company nor at any other time has the libellant, or any other person or persons, paid to the said respondent, or to its officers or
88 agents, the freight agreed to be paid for the transportation thereof, and in the said bill of lading stipulated and provided for. Nor has any part thereof been paid or offered to be paid. And the respondent in fact further say, that the said abandonment was so made without its request or knowledge, and solely at the instance of said libellants, and the same was so accepted by the said insurance company without the consent or knowledge of the respondents. And the respondent in fact further says, that in making the delivery of the said wheat to the said insurance company, it did not waive or release its right to the payment of the freight stipulated for in the bill of lading, nor to any part thereof; that the delivery of the said wheat to the said insurance company, and to the purchasers from and under it, was at the request of the said company, and the same was voluntarily accepted by the said insurance company, and the said purchaser, and not otherwise.

89 Fifteenth. And the said respondents in fact further say, that of the said two parcels of wheat hereinbefore mentioned there remains in the hands of the said respondents eleven hundred and fifty bushels thereof, and that the same is detained by respondents as security for the payment of the freight upon the said two parcels, so far as the same will go; that the value thereof is about eleven hundred dollars, and that the respondents have no other security for the payment of the said freight.

Wherefore the respondents pray that this honorable court will be pleased to pronounce against the claim of the libellants, and that the said libel may be dismissed, with costs; and the respondents further pray that this honorable court will be pleased to decree, decide, and adjudge that the libellants, by reason of the premises and of the various matters hereinbefore stated, is liable to pay to the said respondents the freight stipulated in the bill of lading in the said libel mentioned, and that the said respondents may have judgment
90 therefor, and that the same may be enforced by process issuing out of and under the seal of this honorable court.

THE WESTERN TRANSPORTATION COMPANY,
By JNO. ALLEN, JUNIOR, *President.*

UNITED STATES OF AMERICA, *Northern district of New York:*

On this 10th of October, 1860, personally appeared before me John Allen, junior, of the city of Buffalo, in the district aforesaid, and made oath that he is the president of the Western Transportation Company, the respondent named in the foregoing answer; that he has read the same and knows the contents thereof; that the case in this action and the facts stated in said answer are better known to the said deponent than any other officer or agent of the respondent, and that the said answer is true in substance and matter of fact.

P. G. PARKER, *U. S. Commissioner.*

Indorsed: Filed Oct. 20, 1862.

WM. H. BRADLEY, *Cl'k.*

91 And also on said 20th day of October filed its stipulation as follows, to wit:

Stipulation.

District court, November term, A. D. 1862.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

Whereas a libel was filed in this court on the day of , A. D. 1862, by David Dows and Ami Dows against the propeller Mohawk, her engines, boats, tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned; and whereas a claim has been filed in the said cause by the Western Transportation Company, and the said Western Transportation Company and Bohan S. Shepperd, their surety, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or its surety, execution may issue against their goods, chat-

tels, and lands, for the sum of two hundred and fifty dollars:
92 Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all such costs as shall be awarded against by this court, or, in case of appeal, by the appellate court.

THE WESTERN TRANSP'T. CO.,
By JOHN W. TUTTLE, *Ag't.*
BOHAN S. SHEPPERD.

NORTHERN DISTRICT OF ILLINOIS,
State of Illinois, county of Cook, city of Chicago, ss:

Bohan S. Shepperd, party to the above stipulation, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth the sum of five hundred dollars over and above all debts and liabilities.

BOHAN S. SHEPPERD.

Sworn this twentieth day of October, A. D. 1862, before me; witness my hand and notarial seal.

[SEAL.] CHARLES A. GREGORY, *Notary Public.*

Indorsed: Filed Oct. 20th, A. D. 1862.

WM. H. BRADLEY, *C'lk.*

93 And afterwards, to wit, on the 15th day of June, A. D. 1863, in the record of the proceedings of said court in said cause, is the following entry, to wit:

DAVID DOUSE and AMMI DOUSE
v.
PROPELLER MOHAWK, } Libel.

Now come the parties, by their proctors, and thereupon comes on to be heard the motion of the respondent, on affidavit filed, to dismiss this cause; after argument, the court takes said motion under advisement.

And afterwards, to wit, on the 16th day of June, A. D. 1863, in the record of the proceedings of said court in said cause is the following entry, to wit:

DAVID DOUSE and AMMI DOUSE
v.
PROPELLER MOHAWK. } Libel.

The court having considered and being now fully advised on the motion heretofore submitted to dismiss this cause, overrules the same.

94 And afterwards, to wit, on the 20th day of June, A. D. 1863, in the record of the proceedings of said court in said cause, is the following entry, to wit:

DAVID DOUSE and AMMI DOUSE
v.
PROPELLER MOHAWK. } Libel.

On motion of the libellants, by R. Rae, esq., their proctor, leave is given to amend the libel.

And afterwards, to wit, on the 16th day of July, A. D. 1863, in the record of the proceedings of said court in said cause, is the following entry, to wit:

DAVID DOUSE, AMMI DOUSE, and John D. Muir,
v.
PROPELLER MOHAWK. } Libel.

Now come the parties, by their proctors, and this cause being set down for hearing on the libel, answer, and proofs on file, and after hearing the evidence and the arguments of advocates, the court takes the same under advisement.

95 United States district court, northern district of Illinois, in admiralty.

THE CHICAGO FIRE AND MARINE Insurance Company
ag'st
THE PROPELLER MOHAWK.

It is stipulated that the Mutual Insurance Company of Buffalo, on or about the 25th day of December, 1861, tendered to the respondent, at the city of Buffalo, an amount equal to fifteen cents a bushel on the wheat brought to Buffalo, which amounted to 1,000 bushels, and a sum in addition, to cover the general average charges, amounting to $160, and demanded the delivery of the said wheat to it, the said Insurance Company of Buffalo; the defendant refused the tender and to deliver the wheat, on the ground that it was entitled to freight on the entire shipment in full, pro rata.

R. RAE, *Proctor for Libellant.*
JOHN HUBBELL, *Advocate.*

96 Deposition of John W. Strong, of Detroit, a witness produced and sworn at Detroit, on Thursday, the 22d of January, 1863, on behalf of the libellants.

And the said John W. Strong saith that he is an insurance agent at Detroit, and has been for the last ten years; knows the propeller Mohawk, and knew her in the year 1860; knows that a disaster occurred to her in forepart of November, 1860, whereby she was sunk on the St. Clair flats. On or about the 11th of November, 1860, I received instructions from the Mutual Insurance Co. of Buffalo, of which I am agent, to sell the cargo of the propeller Mohawk as she lay sunk on the flats. About that time I made sale of it to F. E. Phelps for the sum of twelve hundred dollars. After the sale I received advices from the Mutual Insurance Company at Buffalo not to

sell, as there was a difficulty on some question as to the freight. I was about to cancel the sale when the captain and Mr. Bryant, managing agent of the line of propellers, came into my office, and the question of the freight was discussed between us. I told them I should cancel the sale of the cargo if they insisted upon freight.

97 They made inquiry what it was sold for, and replied "It was too good a sale to be lost," and "we will recognize it as a sale fort he benefit of all concerned, as acting for us." The consummation of the sale was made after this conversation. The cargo on board was not delivered until long after this, for the reason that the lighter had started only about an hour or two at most before this conversation took place. The final sale was made by me, acting by advice and instruction of Mr. Bryant and captain of the propeller, after I had determined to revoke the sale originally made by me, under instructions from Mr. Eustaphieve, s'c'y of the Mutual Insurance Company of Buffalo, and the sale finally stood, as by agreement, for the benefit of all concerned to F. E. Phelps, and not for the benefit of the Buffalo Mutual. This final consummation of the sale was made under the orders of the captain and Mr. Bryant, the agent of the Western Transportation Company, and not under orders from any one else. The telegraph hereto appended contained the order given to me and which I followed, as I was directed.

DET., *Nov.* 13, 1860.

To J. W. Strong, [by telegraph from Buffalo, 13, 1860:]

98 Have nothing to do with grain on Mohawk unless owners of vessel relinquish all claim for freight. Write to-day. Tell them to take it to Buffalo if they want freight.

A. A. EUSTAPHIEVE.

I was instructed by Mr. Bryant to hold the money arising from the avails of sale, but no collection of it was ever made by me. I took the note from F. E. Phelps, and sent it to Buffalo to Mr. Eustaphieve, I think, but cannot swear positively.

Cross-examined by S. C. Bates, esq., for respondent:

The note for the sale I do not think was given until some days after the sale. I think I saw the captain of the Mohawk and Mr. Bryant the next day after I had closed with Mr. Phelps to sell him the grain. I remember now that on the 12th of November I enclosed the note of Phelps to Mr. Eustaphieve, sec'y of the Mutual Insurance of Buffalo, informing him that I had sold the balance in the Mohawk as she now lies sunk on the flats.

J. W. STRONG.

Sworn and subscribed, by consent, before me this 22d day of Jan., 1863, at Detroit.

R. RAE, *U. S. Com'r.*

Indorsed: Filed July 16, 1863.

WM. H. BRADLEY, *Clk.*

99 And afterwards, on the 10th day of July, A. D. 1863, the following stipulation was filed in said cause, and reads as follows, to wit:

Stipulation.

United States district court, northern district of Illinois, in admiralty.

DAVID DOWS AND AMMI DOWS
vs.
THE PROPELLER MOHAWK, her boats, &c.

THE CHICAGO FIRE AND MARINE INS. CO.
v.
The same.

The following points are to be admitted on the trial of this action for the purposes of such trial:

First. That the Chicago Fire and Marine Insurance Company, one of said libellants, and this respondent are corporations as stated in the libel and answer; that said propeller, being in good and seaworthy condition, left the port of Chicago upon the alleged voyage,

100 and after the same had been more than half completed and performed in safety, and while so engaged in the prosecution of said voyage, grounded upon St. Clair flats, and in the effort to get off the said propeller became disabled by the bursting of her boiler, and was thereby compelled to suspend the further prosecution of the said voyage until said propeller could be gotten off and the necessary repairs could be made. This disaster occurred thirty miles from Detroit, in the State of Michigan, on the 7th day of November, 1860, and all the wheat except eleven hundred bushels was damaged by the sinking of the propeller; that upon informatian of said disaster reaching Buffalo, the agent of the owner of said wheat immediately abondoned the same to the Mutual Ins. Co. of Buffalo, said company having insured the same against loss or damage on said voyage by reason of the danger or risk of navigation and other dangers mentioned in said policy. The Mutual Ins. Co. of Buffalo accepted the abandonment so made, and paid the loss to the owner of the wheat. The propeller was got off after some time, but as to what the length of time, either party may offer further proof, and subsequently

101 was towed to Buffalo in a disabled condition before the close of navigation for that year, which closed about the middle of December. No part of the freight on the wheat has been paid or tendered by the shippers or owners thereof, or by the Mutual Ins. Co. of Buffalo, or any other person or persons, except as hereinafter mentioned. At the time the same was delivered to and taken by Phelps no offer to pay the freight or any part of it was made by him or any other person or persons, and that at the time no freight was demanded of said Phelps. Nineteen thousand and ninety (19,090) bushels of wheat were delivered on the flats and at Detroit to Phelps, who became the purchaser and who gave his note to the Mutual Ins. Co. for the purchase-money. Eleven hundred (1,100) bushels were

transported to Buffalo in good order, and the libellants tendered full freight on the same and all their lawful charges, which included fifteen cents freight and general average charges, but refused to pay any pro rata or full freight on said wheat delivered on the flats or
102 at Detroit. Respondents refused to deliver said eleven hundred (1,100) bushels, but still retain the same as aforesaid. The note taken for the sale of the damaged wheat at the flats and Detroit was taken by and held in the possession of the Mutual Ins. Co. of Buffalo, and by them put in judgment. It is stipulated as to the evidence taken in the cause, and the stipulation shall apply to both cases, that either party is at liberty to take further proof as to any of the matters in issue, whether mentioned in this stipulation or otherwise, but no proof contradictory to this stipulation.

ROB. RAE,
Proctor for Libellant.
BATES & TOWSLEE,
Proctors for Respondent.

Indorsed: Filed July 10, 1863.

WM. H. BRADLEY, *Clk.*

103 DAVID DOWS AND AMMI DOWS
vs.
THE PROPELLER MOHAWK.

The deposition of Jno. W. Strong and Francis E. Phelps, taken the 6th day of July, 1863, before Thomas S. Blackman, commissioner, at Detroit, on the part of the respondents.

And the said Jno. W. Strong, being about the age of forty-seven years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy aforesaid, I did carefully examine the said Jno. W. Strong, and he did thereupon depose, testify, and say as follows, viz:

I reside in Detroit, Michigan; I have been examined in this cause before; I am the person who is the agent in Detroit, of the Mutual Insurance Company of Buffalo. It appears from my letter-book that the sale of the wheat on the Mohawk, mentioned in my former deposition, was made to Phelps, on November 12th, 1860, and I suppose that I received his note for the wheat on that day—the letter so states. On that day I advised the Mutual Insurance Company of the sale and of the enclosure of the note to the company. On the same day
104 I wrote an order for the grain, which was signed by the captain of the Mohawk, but not by me. The counsel for the respondent here produces the paper which is hereto annexed, marked Exhibit A, about which the witness says, This paper is that order. The witness then produces the telegraphic message hereto annexed, marked Exhibit B, about which he says, I received this message November 13th, 1860, from A. A. Eustaphieve, who was the secretary of the Mutual Insurance Company of Buffalo. On the day of the date of the telegraph annexed to my former deposition I received that so annexed to said former deposition, which requested me to have nothing

to do with the grain on the Mohawk. On receipt of this last telegraph the grain had not been delivered on order to Phelps, and I saw the captain of the Mohawk and Mr. Bryant, acting with the captain, but I do not know for whom, and I asked them the question about the freight. They said they should insist on all the freight they were entitled to. I then told them if they did not abandon the freight I should cancel the sale. They said it was too good a sale to be lost, and that they would recognize it as a sale for the benefit of all
105 concerned. I cannot tell which of them made that remark. They acted in concert. I cannot particularize what was said by either the captain of the Mohawk or Mr. Bryant. I did not know of my own knowledge of Mr. Bryant's connexion with the Western Transportation Company; I was informed that somebody was coming to act for the company, and when Mr. Bryant came he acted in that capacity. I am not certain whether I received any instructions from Mr. Eustaphieve n reference to cancelling the sale, except what is contained in the telegraph annexed to my former deposition. After receiving that telegraph I saw Mr. Phelps, and found that the lighter had just left the dock with men to go to the Mohawk to take off the grain. I informed him that I might want to send for the lighter back again or cancel the sale, I am not positive which. My recollection of that conversation is very vague and indefinite. I supposed the whole matter was ended long ago, and thereupon did not charge my memory with it. I do not recollect that anything else was said between Phelps and myself at that time about cancelling the sale. I do not
106 recollect that anything was said between Bryant, the captain of the Mohawk, and myself in reference to this business, except what I have already stated. In my former deposition, where I speak of the consummation of the sale and the final sale having been made by me, acting upon the advice of Mr. Bryant and the captain of the propeller, and in stating that the sale finally stood, as by agreement, for the benefit of all concerned to Mr. F. E. Phelps, and not to the benefit of the Buffalo Mutual, I meant to be understood as giving my opinion, based on the facts already stated by me. As far as I can recollect, I have given all the facts relating to this transaction. I had known Harvey D. Pheatt as master of the propeller Mohawk; I had no personal acquaintance with Mr. Bryant up to that time, but knew him by reputation; he appeared to act with authority in this business; I knew nothing of his connexion with the Western Transportation Company until I met him on this occasion.

J. W. STRONG.

And also the said Francis E. Phelps, being about the age of six-
107 ty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter in controversy aforesaid, I did carefully examine the said Francis E. Phelps, and he did thereupon depose, testify, and say as follows, viz:

I reside in Detroit, Michigan, and resided there in November, 1860; I know John W. Strong, agent in Detroit of the Mutual Insurance Company of Buffalo. On or a day or two before November 12th,

1860, I purchased of him the balance of the cargo of wheat then on the propeller Mohawk. The propeller had met with an accident, having exploded her boiler or something of that sort, and she was then on the St. Clair flats. The consideration of that purchase was twelve hundred dollars, I think; I speak from memory, but I am quite sure that was the price. I gave a note for thirty or sixty days for the purchase-money. I delivered the note to Mr. Strong, but do not recollect certainly for what company it was delivered. I received evidence in writing from him of the sale. The paper hereto annexed, marked Exhibit C, is here produced by the witness, about
108 which he says, This is a true and correct copy of the paper delivered to me by Mr. Strong on that sale; I have the original in my possession, but am unwilling to part with it for the reason that I may wish to use it in subsequent business transactions. After receiving the certificate of purchase, of which this paper, Exhibit C, is a copy, I sent a steamer up after the wheat. It was necessary for the captain of the steamer or lighter which I sent to have an order for the wheat. I sent him to Mr. Strong for the order, or at any rate I took such steps that the order was procured from the captain of the Mohawk, and I afterwards learned that the order was all right. The steamer or lighter which went up for me to the Mohawk took off one or two loads, and then towed the Mohawk down to Detroit with the balance of her cargo on board. She was engaged in that business either five or six days, I am not certain which. After the Mohawk was towed down to Detroit, I sent a portion of her cargo down to Buffalo on board her; I do not remember that anything was said to me by Mr. Strong or any one else about cancelling the sale after I had made the purchase. There was no conversation on that
109 subject to my recollection, and I am very sure I should have remembered it had there been any. There was nothing said to me, to my recollection, about sending for the steamer or lighter and bringing her back. I do not think any such thing occurred, for to my recollection there was never anything said or done about cancelling or heading-off the sale. The Mutual Insurance Company of Buffalo, after that sale to me, sued me on the note which I gave in payment for the wheat. The company afterwards demanded and collected of me one hundred dollars or upwards, in addition to the purchase-money to be paid by me for the wheat; I do not recollect the precise nature of the charge, but they claimed it as a general average, or something of that kind, and finally I paid it.

F. E. PHELPS.

DETROIT, *Nov.* 12*th*, 1860.

The Mutual Insurance Company of Buffalo have sold to Mr. F. E. Phelps the remaining grain in the Mohawk; you will therefore let him or his agent go in and take it.

THOMAS S. BLACKMAN, *Commissioner.*

Exhibit A, H. D. Pheatt.

110 DETROIT, *Nov.* 12*th*, 1860.

To Jno. W. Strong, [by telegraph from Buffalo, 13, 1860:]
Yours of twelfth (12) received. Sale of grain all right.
A. A. EUSTAPHIEVE.

Exhibit B, Thomas S. Blackman, commissioner.

DETROIT, *Nov.* 12*th*, 1860.

This is to certify that the Mutual Insurance Company of Buffalo, has this day sold to F. E. Phelps the balance of grain on the propeller Mohawk, as she now lies sunk on the flats of Lake St. Clair.
(Signed) J. W. STRONG, *Agent.*

Exhibit C, Thomas S. Blackman, commissioner.

111 DAVID DOWS and AMMI DOWS
vs.
THE PROPELLER MOHAWK.

The deposition of Harvey D. Pheatt, taken on the 13th day of July, A. D. 1860, before Azariah T. Galt, notary public, at Chicago, on the part of the respondents.

Harvy D. Pheatt, being first duly sworn, deposes and says: I am master of the propeller Mohawk, and was master at the time she was grounded on St. Clair flats, in Nov., 1860, and when she had the cargo of grain about which is the subject of this suit. I arrived at Newport, on the St. Clair river, about 9 o'clock Monday night. I know Jeremiah S. Saunders; he resided at Newport. He came aboard of my propeller, the Mohawk, at that place at my invitation. I asked him to go down with me to the flats; that I wanted to get over that night. I wanted him to put up his range light at the flats. I think Capt. Saunders has the job of putting down the buoys on the flats in the spring of the year. He at that time put up range lights for those that wanted him to. These range lights are a little above
112 the lights at the mouth of the St. Clair river. The range lights are placed on stakes at mouth of St. Clair river. These lights are placed there by Saunders as a private enterprise; he receives payment for this trouble by private contribution. I assumed that these lights were not lighted when I arrived at Newport, and upon that assumption I stopped there for the purpose of getting him to light them. He, with his men, went on board for that purpose. He did not go on board for any other purpose that I am aware of. He had nothing to do with our boat as pilot. I am a pilot myself. I have been acquainted with the navigation over the St. Clair flats for twenty-six or twenty-seven years—that is, the old flats. I was well acquainted with that channel in November, 1860, and knew all about it. The year the accident happened I had passed over that channel twenty-two times; the year previous several times. I had not been in the habit of employing Saunders as a pilot during the time I navigated this channel. I frequently told him I did not want any pilot. This was in answer to him when he made applications to act as pilot. A part of the channel is natural, and part artificial. At the time this

accident happened we were in the artificial part and the
113 straight part of the channel, about five or six hundred yards from Lake St. Clair. We were within about three lengths of our propeller to the Harriet Ross when we first saw her, that is to say, before we first saw her exact position—that is about six hundred feet. She lay diagonally across the channel. We could not tell at that time whether she was lying at anchor or whether an accident had happened to her, until we got close enough to ascertain that she was not aground. She so obstructed the channel as to impede our passage, but I thought we could get around her stern, and tried to do it. There was some doubt about our getting around. I made the attempt to get around, hoping that I should succeed. The consequence was that the vessel brought up against the east bank of the channel. The propeller became stranded there. I deemed that that was the only safe course for me to take under all the circumstances. There was a current in the channel. We had a heavy load. There was no suggestion made to me by any one to run down against the Harriet Ross and push her out of the way. It would not have been safe and prudent seamanship to have done this. In the night time it is difficult to tell just how fast your boat is going when you are running
114 under a check. There would be great danger of damaging your own boat, and also the vessel. There was danger in attempting to go in front of the Harriet Ross that we should strike against her jib-boom, and her chain and anchor being still further out, and the water was shoally. Jerry Saunders was aboard of the propeller at this time; he did not have anything to do with the management of the propeller. He was not in consultation with me in regard to the management of the boat—that is to say, I did not take his advice, as I was acting as my own pilot. Jerry Saunders understood very well that I did not want any pilot over the St. Clair flats. I never knew Saunders as having had anything to do with steam vessels. I supposed that when Saunders came on board *that* he was going with his men to put up the range lights, and that he was going off with his men. After I came to Detroit, after the accident, I saw a man by the name of Strong. He came to me in his office with an order, I think, in his own handwriting, to get me to sign it; it was to deliver the wheat to a man by the name of Phelps. I think Mr. Phelps sent for the wheat the same day the order was given. I should think there was about eight thousand bushels of wheat, wet and dry together, delivered on the flats and I think there was some
115 four or five thousand bushels delivered at Detroit. The balance of the wheat was taken to Buffalo on the propeller Mohawk under an arrangement with Mr. Phelps. He made a contract with me to take it to Buffalo; I think the rate of freight was five or six cents a bushel. After signing this order and giving it to Strong I saw him several times. My impression is that it was the next day after signing the order that I saw Strong about the freight on the Mohawk. He said that Mr. Eutaphieve had telegraphed him from Buffalo not to have anything to do with the wheat if the propeller charged pro rata freight. Mr. Strong, myself, and George Bryant talked the matter

over, and concluded to let the freight be an after-consideration, and then everything went on as before.

Cross-examination by Mr. Rae:

At the time this accident happened I was a stockholder in the transportation company who owned the Mohawk. I had sixty-six shares, worth fifty dollars a share. I am not a stockholder now. I think it is about six weeks or two months since I sold a portion of it, the balance I sold about twenty days ago. I sold six shares to L. H.
116 Rumsell, and the balance to John Allen, the president of the company, about twenty days ago.

Int. Did you sell this stock for the purpose of becoming a witness in this case?

Ans. I sold it in order that I might come forward on the witness stand and do justice to the Western Transportation Company, being advised that under the laws of Illinois I could not be a witness without doing so. I got forty-five dollars a share from John Allen, and took his paper on demand. I have not received any money on that paper. I think the market value of the stock when I sold was forty-five dollars a share, and could get no more.

I think the map now shown me of the St. Clair flats, marked Exhibit A, is pretty good. The place marked A on the map is about the place where the accident occurred. We were going out of the channel when the accident occurred. Our vessel boiler exploded about two hours after the boat had stranded, and it sunk, and the goods were damaged. I do not recollect any particular words that Jerry Saunders spoke to me. He might have told me to go down slowly against the schooner and go around the stern. At the
117 time I had the conversation with Strong I did not see the telegraph referred to above, but he told me the substance of it; that he was not to touch the wheat if we claimed pro rata freight.

Int. What was your idea about the freight?

(Question objected to by Mr. Hubbel.)

Ans. My idea was that the insurance company was going to take the wheat and sell it and make the most of it. I supposed, of course, that we were relieved from all liability.

(Mr. Rae objects to the witness on the ground of interest.)

H. D. PHEATT.

(Here follows map, marked page 117.)

118 And afterwards, to wit, on the 30th day of September, A. D. 1863, in the record of the proceedings of said court in said cause, is the following entry:

DAVID DOUS, AMMI DOUS, and JOHN D. MUIR } Libel.
v.
PROPELLER MOHAWK.

Now come the parties, by their proctors, and the court having considered, and being now fully advised upon the matters heretofore submitted herein, pronounces for the respondent.

It is thereupon considered and adjudged by the court that the libel be dismissed without prejudice, at the costs of the libellants, and that the respondents have and recover of the libellants their costs herein to be taxed, and that execution issue therefor against said libellants and their stipulators, and the libellants, by their proctor, pray an appeal to the circuit court.

119 And afterwards, to wit, on the 3d day of October, A. D. 1863, the said libellants, by their proctor, filed in the clerk's office of said court for the district aforesaid their appeal, in the words and figures following, to wit:

THE CHICAGO FIRE AND MARINE INSURANCE Company
v.
THE PROPELLER MOHAWK, Western Transportation Company, claimants.

DAVID AND AMMI DOUSE *et al.*
v.
The same.

Circuit court of the United States for the northern district of Illinois.

The appeal of the abovenamed appellants respectfully showeth: That on or about the 20th day of October, 1862, the abovenamed libellants, "The Chicago Fire and Marine Insurance Company" and "David and Ammi Dowse and John D. Muir," trading as D. & A. Dowse & Co., exhibited their libel in the district court of the United States for the northern district of Illinois against the appellants, each claiming over fifty dollars, praying, among other things, for

120 the reason set forth in the libel, that these appellants might be condemned to pay the demands of said libellants, the libel having been consolidated by order of the honorable district court, and amended. That process issued out of said court having been served on the respondents, and they having filed their separate answers to said libel in said district court praying that the said libel be dismissed with the costs in that behalf, as by reference to said libel and the said answers may more fully appear, that the said cause came on to be heard before the honorable Thomas Drummond, judge of the said district court, on or about the 10th day of July, A. D. 1863, upon the depositions and proofs taken in said cause, and the testimony and proofs adduced by the respective parties; and the judge having advised thereon, on the 30th day of September, A. D. 1863, made a decree or sentence in said court, whereby it was, among other things, sentenced and decreed that the libel filed in this cause be dismissed without prejudice.

And these libellants are advised and insist that these decrees are erroneous, inasmuch as the libellants were entitled to a decree in the premises for the damage claimed in said libel. And the ap-

121 pellants, for these and other reasons, appeal from the whole of the said decree in favor of said respondents to the present

circuit court, as per stipulation, to be held in the said district, to have the , and on the said appeal they intend to make more allegations, and introduce the same and other proofs, to be introduced to the said circuit court, and they pray that the said decree and every part thereof may be reversed, with cost, and such other decrees thereon made as to the said circuit court shall seem just, and that the said appellees be condemned to pay to these appellants their costs and damages in the premises.

ROB'T RAE, *Proctor for Libellants.*

Indorsed : Filed Oct. 3d, 1863.

WM. H. BRADLEY, *Cl'k.*

Appeal bond.

Whereas an appeal has been taken to this court from the district of the United States in the northern district of Illinois, in a certain cause wherein the Chicago Fire and Marine Insurance Com-
122 pany and David and Ammi Douse and are libellants against the Propeller Mohawk, her boats, &c., the Western Transportation Company are claimants, and the said appellants have been ordered to give security in the sum of five hundred dollars for the payment of all damages and costs on the appeal to this court and in the Supreme Court :

Now, therefore, the stipulators undersigned hereby stipulate, in the said sum of five hundred dollars, to pay all damages and costs on the appeal in this court and in the Supreme Court, in case such appeal shall intervene.

JOSHUA BARRELL.
SILAS PRATT.

Taken and acknowledged this 2d day of Oct., 1863.

R. RAE, *U. S. Com'r.*

U. S. A., *Northern district of Ill., ss :*

Silas Pratt, being duly sworn, deposes and says that he resides in the northern district of Illinois, and is worth $1,000 *dollars* over all his debts and liabilities.

SILAS PRATT.

Sworn and subscribed before me this 2d day of Oct., A.D. 1863.

R. RAE, *U. S. Com'r.*

123 Indorsed : Bail approved.

BATES & TOWSLEE, *Proctors for Def't.*

Filed Oct. 3d, 1863.

WM. H. BRADLEY, *Cl'k.*

124 NORTHERN DISTRICT OF ILLINOIS, *ss :*

I, William H. Bradley, clerk of the district court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a true transcript of the record of the district court of the United States for the northern district of Illinois in the cause wherein

David Dows *et al.* are the libellants, and the Propeller Mohawk respondent, the Western Transportation Company claimant, as the same appears from the records of said court in said cause, and made in pursuance to the fifty-third rule of the Supreme Court, adopted December term thereof, A. D. 1854.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in Chicago, this twelfth day of October, A. D. 1863, and of our independence the 88th year.

[SEAL.] WM. H. BRADLEY, *Clk.*

Indorsed: Filed Oct. 12th, 1863.

WM. H. BRADLEY, *Clk.*

125 On this day, to wit, the 23d day of November, A. D. 1863, came Joshua Barrell, and filed in said clerk's office his petition in said entitled causes, which said petition is in the words and figures following, to wit:

To the honorable judge of the United States circuit court for the northern district of Illinois, in admiralty:

The petition of Joshua Barrell in the matter of the Chicago Fire and Marine Insurance Company and David Douse *et al.* against the Propeller Mohawk, in a case of contract of affreightment, civil and maritime, now pending on appeal from the United States district court for this district, respectfully represents: That he is the party having the equitable interest in said causes on behalf of the libellants, and that it appears by stipulation on file in said causes that said libellants were, at the time of the disaster mentioned in said libel, insured in the Mutual Insurance Company of Buffalo upon the wheat mentioned in said libel, and that said libellants, upon information of said disaster reaching the agents of libellants at Buffalo, the agent of the owners of said wheat immediately abandoned the
126 same to the Mutual Insurance Company of Buffalo, who accepted the abandonment so made, and paid the loss to the owners of the wheat; all of which will more fully appear by said stipulation now on file.

And your petitioner would further represent that on or about the 1st day of July, 1862, the Mutual Insurance Company of Buffalo, in and for a valuable consideration, assigned the certificates of insurance in which said owners of said cargo were insured as aforesaid to your petitioner, who is now the bona fide holder thereof, and entitled to all choses of action accruing to the Mutual Insurance Company of Buffalo by reason of the payment of said loss, said damage to said cargo, or by reason of said certificates of insurance.

Wherefore your petitioner prays that said court would be pleased to make an order admitting petitioner as the dominus litis in said cause, and to intervene for his interest therein, according to the 34th Rule in Admiralty of the Supreme Court in such cases made and provided.

JOSHUA BARRELL.

Sworn and subscribed before me this 19 day of Oct., A. D. 1863.

R. RAE, *U. S. Com'r.*

Indorsed: Filed Nov. 23, 1863.

WM. H. BRADLEY, *Clk.*

127 On this day, to wit, the 23d day of October, in the adjourned October term, A. D. 1863, of said circuit court, in the record of the proceedings thereof in said entitled causes, is the following entry, to wit:

The Chicago Marine and Fire Insurance Company *v.* Propeller Mohawk; and David Douse, Ammi Douse, and John D. Muir *v.* Propeller Mohawk.	Appeal.

Now come the parties, by their proctors, and on motion, it is ordered by the court that the above-entitled causes be consolidated; and, on petition filed, it is further ordered that Joshua Barrell be subrogated to all the rights of the libellants herein, and leave is also given to file an amended libel, and the respondents are ruled to file their answer by the first day of December next; and this cause is continued, upon affidavit filed, to the next term of this court, the respondents to pay proctor's fee in the sum of fifty dollars.

On the same day, to wit, the 23d day of November, A. D. 1863, came Joshua Barrell, and filed an amended libel in said causes, which is as follows:

128 To the Hon. David Davis, judge of the United States circuit court for the northern district of Illinois, sitting in admiralty

The libel of Joshua Barrell, who, by order of the honorable court made on the day of October, A. D. 1863, was subrogated to the rights of the libellants, and made dominus litis in the matter now pending in said court of the Chicago Fire and Marine Insurance Company, a corporation by virtue of the laws of the State of Illinois, and David Dows, Ammi Dows, and John D. Myers, trading as A. Dows & Co., against the Propeller Mohawk, her engines, boilers, machinery, boats, tackle, apparel, and furniture, (the Western Transportation Company claimant,) in a cause of contract of affreighment, civil and maritime, alleges as follows:

First. That said propeller Mohawk, which was lying at the port of Chicago at the time the original libel was filed in the cause, was and is a vessel of twenty tons burthen and upwards, and at the time when said cause of action hereinafter stated and set forth arose was, and is now, enrolled and licensed for the coasting trade, and em-
129 ployed in the business of commerce and navigation between points and places in different States, upon the lakes and the navigable waters connecting the same.

Second. That on or about the 31st day of October, A. D. 1860, the Chicago Fire and Marine Insurance Company, and A. Dows & Co., shipped a certain quantity of grain on board the propeller Mohawk, then lying at the port of Chicago, in the State of Illinois, to wit:

The Chicago Fire and Marine Insurance Company, ten thousand bushels of No. 1 spring wheat, and D. & A. Dows & Co., ten thousand two hundred and seventeen $\frac{45}{60}$ bushels of No. 1 spring wheat, to be transferred and conveyed on board said propeller from the port of Chicago to the port of Buffalo, in the State of New York, and to be delivered by the said propeller Mohawk safely at said port of Buffalo to the respective consignees of said libellants, upon paying the freight of fifteen cents per bushel for each and every bushel so delivered as aforesaid, according to the tenor and effect of the bill of lading made, signed, and delivered by the agent of said propeller Mohawk to said libellants in the premises, copies of which are annexed to the original libel filed in this cause.

130 Third. That said twenty thousand two hundred and seventeen $\frac{45}{60}$ bushels of wheat was, at the time it was delivered by the said libellants on board said propeller Mohawk as aforesaid, in good condition, and of the value of twenty thousand two hundred and eighteen dollars; that said wheat was at the time of its delivery to said propeller for transportation as aforesaid, the property of said libellants, and of the value above stated.

Fourth. That said propeller, being in good and seaworthy condition, left the port of Chicago upon the voyage aforesaid with the wheat on board, and after the said voyage had been more than half completed and performed in safety, and while so engaged in the prosecution of said voyage, on the 9 day of Nov., 1860, was carelessly and unskilfully grounded upon St. Clair flats, thirty miles from Detroit, in the State of Michigan, and in the effort to get her off the said propeller became disabled by the careless and negligent bursting of her boiler, and then and there sunk with said cargo on board, and all the wheat except 1,100 bushels was damaged by the sinking of the said propeller.

131 Fifth. That upon information of the said disaster reaching Buffalo, the agent of the owner of said wheat immediately abandoned the same to the Mutual Insurance Company of Buffalo, said company having insured the same; the said insurance company accepted the abandonment so made, and paid the loss to the owners of the wheat; that said insurance company, on the 1st day of July, A. D. 1862, assigned the certificate of insurance on which said owners of said cargo were insured as aforesaid to Joshua Barrel, the present libellant in this cause.

Sixth. That said eleven hundred bushels of wheat, which was the only wheat of said cargo not damaged as aforesaid, was never delivered to the consignee of said wheat, or any other person or persons, but is now unlawfully detained by the owner of said propeller.

Seventh. That said shippers and insurance company have, by reason of the damage to said wheat as aforesaid, and the unlawful detention of said sound wheat, suffered damage in the sum of twenty

thousand two hundred and 18 dollars, which is now due and
132 unpaid this libellant, Barrel, and which has been demanded of respondents, but which they neglect and refuse to pay the same or any part thereof; that all and singular these premises are true, and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore libellant prays that the honorable circuit court would be pleased to decree payment of said damages, together with interest from the date of loss, and all costs in the premises to be made by the respondent, and to grant such other and further relief as law and justice may require.

JOSHUA BARRELL.

Sworn and subscribed before me this 19 day of Oct., A. D. 1863.
R. RAE, *U. S. Com'r.*

Indorsed: Filed Nov. 23, 1863.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the first day of December, A. D. 1863, came the Western Transportation Company, claimant and owner of said propeller Mohawk, by Bates & Tonslee, its proctors, and filed in said clerk's office its answer in said entitled causes, which said answer is in the words and figures as follows:

133 United States circuit court, northern district of Illinois, in admiralty:

THE CHICAGO FIRE AND MARINE INSURANCE Company *ag'st* THE PROPELLER MOHAWK, her boats, tackle, apparel, &c.

DAVID DOWS, AMMI DOWS, AND JOHN D. Mairs *ag'st* The same.

To the honorable David Davis and Thomas Drummond, judges of the United States district circuit court in and for the northern district of Illinois:

The answer of the Western Transportation Company, claimant and owner of the said propeller Mohawk, her boats, tackle, apparel, furniture, engines, machinery, &c., to the libel of Joshua Barrell, heretofore filed in the above-entitled causes, doth allege and articulately propound as follows:

134 First. That it, the said claimant, now and at all the several times hereinafter mentioned was and is a corporation duly created, organized, and existing under the laws of the State of New York, having its principal office and place of business in the last-mentioned State, and not elsewhere, and that it was and is the owner of the said

propeller Mohawk, her boats, tackle, apparel, furniture, machinery, engines, &c., at all the several times herein mentioned.

Second. And as to the several matters and things alleged in the first article of the said amended libel, the respondent admits the same to be true in substance and matter of fact.

Third. And as to the several matters and things in the second article of said amended libel stated and set forth, the respondent denies the same in manner and form as the same are therein stated and set forth.

Fourth. And as to the several matters and things in the third article of said amended libel stated and charged, the respondent denies that the wheat therein mentioned was the property of the libellants, as therein stated, but it admits that the said wheat was of the
135 value claimed in the said third article of the said libel, and that the same was in good condition at the time of its delivery on board the said propeller.

Fifth. And as to the several matters and things in the fourth article of the said amended libel stated and charged, the respondent admits that the said propeller, being in good and seaworthy condition, left the port of Chicago upon a voyage from Chicago to Buffalo, with the certain wheat on board which is more particularly mentioned and referred to in the bills of lading, copies of which are annexed to the original libels filed in these causes respectively; and that after the said voyage had been more than half completed and performed in safety, and while so engaged in the prosecution of said voyage, on or about the ninth day of November, 1860, the said propeller grounded upon St. Clair flats, and in the effort to get her off, the said propeller became disabled by the bursting of her boiler, and then and there sunk with the said cargo on board, and all of the said wheat except eleven hundred bushels was damaged by the sinking of the propeller; but the respondent denies that the grounding of the propeller was caused by the carelessness or unskilfulness of the
136 officers or crew of the propeller, or of the servants or agents of the respondent. And the respondent further denies that the bursting of the boiler was caused by the carelessness or negligence of the officers or crew of the said propeller, or of the respondent, or any of its officers, servants, or agents, on the contrary thereof, the said respondent says that the grounding of the said propeller was owing to and caused by the dangers and perils of navigation, and not otherwise, and that the bursting of the said boiler and all of the supposed and pretended damage to the said wheat was caused by the dangers and perils of navigation, and not otherwise.

Sixth. And as to the several matters and things in the fifth article of the said libel stated and charged, the respondent admits the same to be true in substance and matter of fact, except so much and such parts thereof as alleges that the said insurance company did, at the time in the said fifth article stated, or at any other time, assign the certificate of insurance therein mentioned to the said Joshua Barrell, as to which, and to each and every part thereof, the respondent denies

the same in manner and form as the same are therein stated and set forth.

137 Seventh. And as to the several matters stated and charged in the sixth article of the said libel, the respondent admits that the eleven hundred bushels of wheat therein mentioned was never delivered to the consignee of the said wheat, or other person or persons, but it denies that the same is unlawfully detained by it, the said respondent; on the contrary thereof, the said respondent says that at all times hitherto it has been, was, and still is ready and willing to deliver the same to the owner or consignee of the said wheat upon payment of its claim and lien thereon for the transportation of the wheat mentioned in the bills of lading hereinbefore mentioned.

Eighth. And as to the several matters and things in the seventh article of the said libel stated and charged, the said respondent denies the same, and each and every of them, in manner and form as the same are therein stated and set forth.

Ninth. And, further answering the said amended libel, the respondent says that the two certain parcels of wheat mentioned and referred to in the bills of lading, copies of which are annexed to the

138 original libels filed in this cause in the name of the Chicago Fire and Marine Insurance Company, and in the name of David Dows and Ammi Dows, were shipped on board the said propeller by the said Isaac Sherwood and Frederick N. Bronson, who were then the owners thereof respectively, and that the said N. K. Fairbanks mentioned in the said bills of lading having made certain advances of money to the said Bronson and Sherwood respectively, either upon his own account or the account of other persons as their agent or agents, it was then and there agreed by and between the said Fairbanks and Sherwood and Bronson that the said Fairbanks should have a lien upon and the control of the said wheat for the purpose of securing the repayment of such advances, and that the said Sherwood and Bronson should procure the same to be insured against the dangers and perils of navigation for the benefit of the said Fairbanks or the person or persons for whom the said advances were made, and should transfer and assign to the said Fairbanks the policies or certificates of insurance as further security. And thereupon, and in pursuance of the said agreement between the said Bronson and

139 Sherwood and the said Fairbanks, the bills of lading hereinbefore referred to were made out and delivered to the said Fairbanks, at the request and by the direction of the said Bronson and Sherwood respectively, for the purpose of such security, and not otherwise, and that the said Bronson and Sherwood did thereupon, in further pursuance of such agreement, procure the said two parcels of wheat to be insured in the Mutual Insurance Company of Buffalo against the perils and dangers of navigation on the said trip or voyage from Chicago to Buffalo, and that policies or certificates of insurance were thereupon assigned or transferred to the said Fairbanks by way of further security, and not otherwise. And the respondent further says that the advances so made by the said Fairbanks, whether made upon his own account or upon the account of the said

the Chicago Fire and Marine Insurance Company and the said David Dows and Ammi Dows, or otherwise, to the said Bronson and Sherwood respectively, were fully paid and satisfied before the commencement of this suit, and before the filing of the original libels in the name of the said the Chicago Fire and Marine Insurance com-
140 pany, and in the name of the said David Dows and Ammi Dows, or of the amended libel in the name of the said Joshua Barrell, libellant.

Tenth. And, further answering the said libel, the respondent says that the original libels filed in this court in the name of the said the Chicago Fire and Marine Insurance Company, and in the name of the said David Dows and Ammi Dows, were so filed, and the said suits or actions prosecuted, without the knowledge, consent, or concurrence of the said pretended libellants, and that the said pretended libellants, that is to say, the said the Chicago Fire and Marine Insurance Company, and the said David Dows and Ammi Dows, nor any or either of them, have ever made or pretended to have any claim or cause of action against the said propeller, or against this respondent by reason of any matter or thing stated and set forth in the said original libels, or in the amended libel filed in the name of the said Joshua Barrell.

Eleventh. And, further answering the said amended libel, this respondent says that upon the abandonment of the said wheat
141 to it, the said the Mutual Insurance Company of Buffalo, as hereinbefore mentioned. did, with the assent of the said Bronson, Sherwood, Fairbanks, the Chicago Fire and Marine Insurance Company, and the said David Dows and Ammi Dows and John D. Mairs, composing the firm of David Dows & Co., respectively, assume the ownership and control of the wheat mentioned in the said bills of lading, and each and every part thereof; and the said respondent, and the officers and crew of the said propeller, did thereupon hold the said wheat as the agent and bailee of the said Mutual Insurance Company of Buffalo; that the said wheat was then on board the said propeller at the place of its detention, which was about thirty miles from the city of Detroit; that the said propeller was only temporarily disabled; that within a few days after the accident she was got off and taken to Detroit, and from thence to Buffalo, her place of destination, with about eight thousand bushels of the wheat on board, and that she arrived in Buffalo within two weeks from the time of the accident; that the place of detention was in the track of steamboats and vessels navigating the lakes between Chicago and Buffalo, and that
142 the wheat could have been readily transhipped and sent forward to Buffalo by other vessels, in case it should have been found impracticable to have sent the same forward by the said propeller, but that the said the Mutual Insurance Company of Buffalo interposed and prevented the respondent and the master of the propeller from so doing, as is hereinafter stated and set forth.

Twelfth. And, further answering, the respondent says that immediately upon accepting the said abandonment the said the Mutual Insurance Company of Buffalo did sell the said wheat remaining on board the said propeller, which included the entire two parcels men-

tioned in the said bills of lading, except about eleven hundred bushels which had been forwarded to Buffalo by the respondent by another vessel to one F. S. Phelps for a valuable consideration, and did then and there require the master of the said propeller to deliver all of the said wheat so remaining on board to the said Phelps, the purchaser thereof, and thereupon, and in pursuance of such direction and request, the master of the said propeller did then and there deliver to the said purchaser, at the place of detention, eight
143 thousand bushels of the said wheat, and upon the arrival of the said propeller at Detroit, within a few days thereafter, the said master delivered to the said purchaser eleven thousand and ninety bushels of the said wheat, making all the wheat included in the said two shipments, excepting the eleven hundred bushels hereinbefore mentioned. And afterwards the said purchaser reshipped on board the said propeller five thousand bushels of the said wheat, to be transported to and delivered at Buffalo upon her arrival on the said voyage.

Thirteenth. And, further answering, the respondent says that the abandonment of the said wheat, and the acceptance thereof by the said insurance company, was made and accepted without consultation with the said respondent, its officers or agents.

Fourteenth. And, further answering, the respondent says that upon the delivery of the said wheat to the purchaser thereof from the said insurance company, it became and was entitled to the freight stipulated in the bills of lading for the entire trip or voyage. And that in making such delivery it did not waive or release its right
144 to the payment thereof; and that of the said wheat so shipped eleven hundred bushels still remains in the possession of the respondent, and was retained by it as security for the payment of the said freight, so far as the same will go; that the value of the said wheat is about eleven hundred dollars, and that the freight so due upon the shipments amounts to three thousand dollars; and after deducting the value of the said eleven hundred bushels of wheat, there still remains due to the respondent the sum of two thousand dollars or thereabouts, together with interest on that sum from the fifteenth day of November, one thousand eight hundred and sixty-one.

Fifteenth. And, further answering, the respondent says that soon after the said accident and the abandonment hereinbefore mentioned a question and controversy arose between the said the Mutual Insurance Company of Buffalo and this respondent in regard to the said accident; that it was then claimed by the said insurance company that it was entitled to the possession of the eleven hundred bushels of wheat which had been sent forward from the place of de-
145 tention at the time of the accident, under and by virtue of the said abandonment; that the said insurance company made no other claim or demand against the said propeller, or against the respondent as the owner thereof, by reason of the said accident or of the pretended damage to the wheat on board thereof, or of any other matter or thing growing out of or connected with the said wheat; that the said insurance company did afterwards commence a suit or

action in the superior court of Buffalo, that being a court of record and having jurisdiction of the persons and subject-matter of said suit or action against the said respondent, for the purpose of recovering the value of the said eleven hundred bushels of wheat hereinbefore mentioned, and making no further or other or different claim or demand whatsoever; that the said respondent appeared in said action and defended the same; that issue being joined therein the said suit or action proceeded to trial, and that while the said suit or action was so pending in the said superior court of Buffalo, and before the same was finally disposed of in said court, some person or persons who are
146 to the respondent unknown entered into a negotiation with the secretary of the said the Mutual Insurance Company of Buffalo with a view to procure an assignment or transfer to them or for their benefit of a claim or cause or causes of action which it was pretended or supposed had accrued to the said insurance company against the said respondent by reason of or growing out of the accident to the said propeller, and which claim or cause or causes of action the said insurance company had given up and abandoned as unfounded and worthless, and which the officers of the said company had decided not to prosecute or insist upon as against the said respondent, and that such negotiations resulted in a pretended sale, assignment, and transfer by the secretary of the said insurance company to the said person or persons of some supposed or pretended claim, demand, cause or causes of action which it was claimed and pretended had accrued to the said insurance company against the said respondent or against the said propeller by reason of or growing out of the aforementioned insur-
147 ance and the accident to the said propeller and the pretended damage to the said wheat, besides and including the claim or cause of action which formed the subject-matter of the suit then pending in the superior court of Buffalo hereinbefore referred to; and that by direction of the said person or persons the said assignment was made in form to the said Joshua Barrell, the libellant named in the amended libel in this cause, and that it was and is under and by virtue of such pretended assignment and transfer that the said libels in this cause were respectively filed by the proctor for the said Barrell, and upon or under no different authority whatever. And this respondent in fact further says, that the said Barrell was and is a mere nominal party to the suit, and that he has allowed his name to be used by other person or persons for the mere purposes of this suit, and not otherwise. And this respondent in fact further says, that the consideration paid or assumed or pretended to be paid to the secretary of the said insurance company for the said assignment and transfer was merely nominal and did not exceed twenty-five hundred dol-
148 lars; that such pretended assignment was not within the scope of the powers and duties of the said secretary, and that the same was not authorized by any resolution of the board of directors or trustees of said insurance company, and that the same was made by the said secretary without the authority of the said board of directors or by the authority of any officer of the said company who was authorized to make such assignment. And, further answering,

the respondent says that the said assignment and transfer was so procured to be made to the said Joshua Barrell for the purpose of bringing a suit or action upon the same in this court and for no other purpose whatever, and that the same was so procured to be made after the said person or persons who negotiated therefor had been informed that the said insurance company had decided not to prosecute the claim or demand so pretended to be assigned, and had abandoned the same as worthless and unfounded.

Sixteenth. And, further answering, the respondent says that soon after making the said pretended assignment and transfer the two libels in the two original causes were filed by the proctor for the said
149 Barrell in the name of the said David Dows and Ammi Dows as libellants in one suit and in the name of the Chicago Fire and Marine Insurance Company on the other suit, and that each and both of said suits were so commenced without the knowledge, consent, or approbation of the parties named as libellants in the said suits or any or either of them, and that the same were so commenced and prosecuted with a view, on the part of the said Barrell and the person or persons for whose use and benefit he has allowed his name to be used, to procure the decree and judgment of this court in the name of the said parties as libellants, and to collect the same and appropriate the proceeds thereof to his or their own use.

Seventeenth. That all and singular the foregoing premises are true.

Wherefore the respondent prays that the said libel may be dismissed with costs, and that it may have such further or other or different order and relief in the premises as may to law and justice appertain and as the court is competent to give in the premises.

THE WESTERN TRANSPORTATION CO.,
By JNO. ALLEN, JR., *President.*

150 UNITED STATES OF AMERICA, *Northern district of New York:*
On this 28th day of November, A. D. 1863, personally appeared before me, at the city of Buffalo, in the district aforesaid, John Allen, jr., who, being duly sworn, says he is the president of the Western Transportation Company, the respondent named in the foregoing answer, and that the said answer is true in substance and matter of fact as he verily believes.

[SEAL.] GEO GORHAM.
United States Commissioner, Northern District of New York.

BATES & TOWSLEE,
Proctors for Respondents.

GEO. C. BATES, *Advocate.*

Indorsed: Filed Dec. 1, 1863.

WM. H. BRADLEY, *Cl'k.*

151 On this day, to wit, the 22d day of June, A. D. 1864, in the record of the proceedings of said court in said entitled causes is the following entry, to wit:

CHICAGO MARINE AND FIRE INSURANCE COMPANY
vs.
PROPELLER MOHAWK;
and
DAVID DOUSE, AMMI DOUSE, and JOHN D. MUIR
vs.
PROPELLER MOHAWK.
} Appeal.

On application of the libellants, by their proctor, upon affidavit filed, leave is given them by the court to take the deposition of before A. T. Galt, esq., at his office at three o'clock this afternoon.

152 On this day, to wit, the eleventh day of July, in the July term, A. D. 1864, of said circuit court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

THE CHICAGO MARINE AND FIRE INSURANCE COMPANY,
David Douse, Ammi Douse, and John D. Muir,
vs.
THE PROPELLER MOHAWK.
} Appeal.

Now come the parties, by their respective proctors, and thereupon this cause is set down for hearing upon the record and proofs filed herein, and after hearing the arguments of the respective proctors, the court not being sufficiently advised in the premises, takes time to consider.

On this day, to wit, the 10th day of July, in the July term, A. D. 1865, of said circuit court, in the record of the proceedings thereof in said entitled cause, is the following entry, to wit:

THE CHICAGO MARINE AND FIRE INSURANCE COMPANY,
David Douse, Ammi Douse, and John D. Muir,
vs.
THE PROPELLER MOHAWK.
} Appeal.

153 The court having considered and being now fully advised upon the matters heretofore submitted herein, it is considered by the court that the decree of the district court herein be affirmed and the libels dismissed at the costs of the libellants, and that the respondent do have and recover of and from the libellants and their stipulators the costs and charges by it about its defence in this behalf expended, and also its costs and charges in the court below, amounting to the sum of dollars and cents, and that it have execution therefor.

154 On the hearing of said cause in said circuit court, the libellants read in evidence the following testimony:

Deposition of John M. Sitts, taken at Chicago, Illinois, on the 21st day of June, A. D. 1864, before Azariah T. Galt, esq., notary public, on behalf of libellants.

155 UNITED STATES OF AMERICA, *Northern district of Illinois:*

Be it remembered, that on this twenty-first day of June, 1864, I, Azariah T. Galt, a notary public for the city of Chicago, in the said district, duly qualified, acting under and by virtue of a special appointment by the court to take the deposition, did come John M. Sitts, personally to appear before me at my office in the city of Chicago, in said district, to testify on the part of the libellant in a certain cause depending in the circuit court of the United States for the northern district of Illinois, at Chicago, wherein Joshua Barrell is libellant, and the propeller Mohawk is respondent; and the said John M. Sitts was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid. I carefully examined the said John M. Sitts, and he did thereupon depose and say as follows, to wit:

1st. int. What is your name, age, occupation, and place of residence?

Ans. My name is John M. Sitts; my age forty-two; occupa-
156 tion is sailing. I live in Oswego, New York.

2d. int. How long have you been a sailor, in what capacity, and where have you sailed?

Ans. I have sailed ever since I was sixteen years old; am now forty-two; in all capacities from cook to master; I sailed between Oswego and Chicago, on all the lakes.

3d. int. State how long you have been a master, and if you have been master of a propeller, and how long.

Ans. I have been master of different propellers for fourteen years; I sailed said vessels before.

4th. int. Have you since that time been constantly passing on the St. Clair flats?

Ans. Yes, sir.

5th. int. Do you know the propeller Mohawk?

Ans. Yes, sir; I have seen her several times.

6th. int. If you were passing through and down the channel on the St. Clair flats, about five or six hundred yards from lake St. Clair, in the artificial channel, in the night time, with the propeller "Mohawk," heavily loaded, and found the channel about six hundred feet ahead of you obstructed by a vessel lying and heading diagonally to
157 the northward and westward across the channel, and at anchor and obstructing the channel, as to impede your passage, but thought you could get around her stern, and there was a doubt about your being successful, what would be your course?

Answer. My course would be to drop down slowly against her and shove her away around out of the channel.

7th. int. What is the condition of the channel at that point?

Ans. The current is not very heavy at that point; it spreads out into lake St. Clair; it is the lake there.

8th. int. Is there any way except grounding to avoid a vessel at anchor across the St. Clair flats?

Answer. Yes, sir; I have been there when vessels got around without grounding.

9th. int. Is there not danger of a collision, followed by damage to either vessel, by going down against the vessel situated as I have stated in question sixth? by going down slowly against her and pushing her out of the way?

158 Answer. That depends altogether on the captain; he may have a collision or not as he chooses.

Cross-examination by Mr. Bates:

1st. int. What vessel do you sail now?

Ans. The propeller "Norman."

2d. int. How long have you sailed propellers on the lakes?

Ans. I have been master of propellers on the lakes for fourteen years.

3d. int. What line of propellers?

Ans. The old Oswego line.

4th. int. Where does the Oswego line of propellers run? Are they a competing line with the Western Transportation Company?

Ans. They run between Oswego and Chicago. I should not think they were a competing line.

5th. int. How heavy is the current in the artificial channel in St. Clair, six hundred yards or about a quarter of a mile above the lake?

Ans. I should not think there was much current there; it may be a mile, or two miles, I have backed up there, and laid there for

159 vessels.

6th. int. How came you to be subpœnaed here as a witness?

Ans. I don t know; don't know which side I am on. I was asked to come by McGill, and came.

7th. int. Who have you talked with before you came here about this suit?

Ans. McGill is the only man I have talked with; he asked me if I would come to a certain office to give my testimony. I told him I would; did not know what they wanted.

8th. int. Have you ever had any conversation touching the collision of the "Mohawk," when she burst her boiler, with McGill or any others?

Ans. Not as I know of; I heard of the collision at the time.

JOHN M. SITTS.

Deposition of Joseph L. Weatherby, taken at Buffalo, New York, on the 25th day of June, A. D. 1864, before Perry G. Parker, esq., U. S. commissioner, on behalf of libellants.

160 UNITED STATES OF AMERICA, *Northern district of New York, ss:*

Be it remembered that on the 24th day of June, 1864, application was made to me, Perry G. Parker, a commissioner appointed by the circuit court of the United States in and for the northern district of New York to take affidavits, acknowledgments of bail, &c., upon affidavit in behalf of Joshua Burrell, stating that the said Joshua Burrell was libellant in a suit then depending in the circuit court of the United States in the northern district of Illinois, on appeal, wherein the Propeller Mohawk is defendant and The Western Trans-

portation Company is claimant and respondent; and that the testimony of Joseph L. Weatherby, of the city of Buffalo in the State of New York, was material and necessary for him, the said libellant, in the prosecution of the said suit, and that said Joseph L. Weatherby resided and lived at the city of Buffalo aforesaid, more than one hundred miles from the city of Chicago, in the State of Illinois, where the court at which the said libellant expected the said cause would be tried was appointed to be held.

That the president of the Western Transportation Company,
161 John Allen, jr., resides at the said city of Buffalo, N. Y., and that John Hubbell, esq., the proctor or counsel for said claimant, respondent in said cause, resides at said city of Buffalo, and I was requested on behalf of said Joshua Barrell that the said Joseph L. Weatherby might be examined according to the directions of the act of Congress in such case made and provided.

Whereupon I ordered that the said Joseph L. Weatherby should be examined *de bene esse*, before me, at the office of the Mutual Insurance Company of Buffalo, in the city of Buffalo, New York, on the 25th day of June, 1864, at eleven o'clock in the forenoon, and that notice of such examination should be given, on said 24th day of June, to John Hubbell, esq., by service on him personally, or his law partner, in the city of Buffalo, or by leaving the same at said Hubbell's office, and also on the president, secretary, or treasurer of the Western Transportation Company personally, or by leaving the same at the office of said company, in said city of Buffalo, in order that said claimant should, if seen fit, be present at such examination and put interrogatories.

162 And I have satisfactory proof that such notice was given. And as well the said libellant, by George B. Hibbard, esq., his counsel, as the said claimant by its counsel, Wm. C. Fitch, esq., appearing before , at the time and place appointed, I have proceeded with the said examination.

Joseph L. Weatherby, being sworn according to law, testified as follows:

I reside in the city of Buffalo, in the State of New York. I am secretary of the Buffalo Mutual Insurance Company, and have been since about the first day of May, 1863, and before the first day of June, 1863.

Witness is shown letter dated June 27th, 1863, addressed to G. and T. Watson, Chicago, and says, That letter was written by me at the time it bears date, and written by me as secretary of said insurance company, and signed by me, and mailed the same day, I have no doubt, to Messrs. G. and T. Watson, at Chicago, Illinois. The letter is hereto annexed, marked Exhibit A.

Witness says that On or about the 15th October, 1863, I received, as secretary, a letter from Robert Rae, of Chicago, Ill., dated October 13th, 1863, of which the paper here shown me is a copy.
163 I have compared said paper with the original on file in my office this morning, and I find it is an exact copy. The ori-

ginal was read to me by one of the clerks in my office, and I at the same time looking over and reading the said copy, and I have no doubt the same is a correct copy of the whole of the letter. The original letter I decline to let go from the files of papers in my possession, as the secretary of said company. The said copy of letter is hereto annexed, marked Exhibit "B."

On the 15th day of October, 1863, I wrote a letter as secretary of said insurance co. to Robert Rae, here shown me, and mailed the same to him at Chicago, the same day, in reply to his of the 13th of October, 1863, copy of which is hereto annexed, marked Exhibit B. The letter of October 15th, 1863, is hereto annexed, marked Exhibit C, and returned as evidence.

Witness says that on the 17th day of June, 1863, there was a meeting of the executive committee of the Buffalo Insurance Company at its office in Buffalo; I find on the records of said company the minutes of the proceedings of said committee.

The minutes produced here by me is the minutes of said pro-
164 ceedings, to wit:

"OFFICE OF THE MUTUAL INS. COMPANY OF BUFFALO,
"*June 17th*, 1863.

"By request of John Allen, jr., the following members of the executive committee assembled: S. S. Jewett, M. P. Bush, H. M. Kinne, and S. K. Worthington, at whose request John Ganson, esq., the attorney of the company, appeared and sanctioned the following telegraph:

"John Hubbell, Chicago:

"Appear for and do what you think necessary to protect the interests of the Mutual Insurance Company of Buffalo, in the case against the Mohawk, before Judge Drummond.

"H. M. KINNE.
"O. L. NIMBS.
"A. Y. BLACKMAN.
"CYRUS CLARK.
"JOHN G. DESHLER.
"M. P. BUSH.
"S. S. JEWETT.

165 "By agreement between the abovenamed members of the executive committee and John Allen, jr., the Western Transportation Company are to give to the Mutual Insurance Company of Buffalo a bond to be drawn by John Ganson, indemnifying the company against any loss sustained in consequence of above instructions to John Hubbell.

"J. L. WEATHERBY, *Secretary*."

The above is a correct copy of the minutes of said proceedings, and of the whole thereof, and states correctly the proceedings of the committee had on that day. I do not know that the telegraph was sent to Hubbell. A copy of said despatch, as above entered in the

minutes, was given to Mr. John Allen, jr., by me at the time, to make such use of as he might think best. Mr. Allen was present during the whole time the committee was together and taking the action stated, and the proceedings were entered in the minutes by me, and, as there was no one else to give the despatch to, I have no doubt I gave it to Mr. Allen, and yet I cannot say now that I remember giving it to him by my own hand. Mr. John Allen, jr., was then acting as an officer of the Western Transportation Company. The
166 despatch given to Mr. Allen was signed by the parties as entered in the minutes in their proper handwriting, and the one in the book of minutes is also signed by them in their own handwriting; the two are duplicates. All the persons who signed the despatch were trustees of the Buffalo Mutual Insurance Company at the time. The executive committee of the said company have delegated to them full power to transact such business for the company. Mr. A. A. Eustaphieve was secretary of said Mutual Insurance Company before me. I was present at the meeting of the executive committee on the 17th of June, 1863, above given, as secretary. I did not act as a member of the committee to assent or dissent to its action. The committee appeared to understand the facts in the matter concerning which they acted, and to be familiar with the whole transaction. The bond to be given by the Western Transportation Company as mentioned in said proceedings was never given. I decline to let the original minutes of the proceedings of the said executive committee go out of my possession, as secretary having their custody.

167 J. L. WEATHERBY.

Exhibits A, B and C, attached to the aforesaid deposition, are in the words and figures following, to wit :

Exhibit A, P. G. Parker, U. S. C.

OFFICE OF THE MUTUAL INSURANCE COMPANY OF BUFFALO,
Buffalo, June 27th, 1863.

Messrs. G. and T. Watson, Chicago :

GENT. : We with much pleasure and entire frankness answer your letter of 25th, received this a. m. There is no desire on the part of the trustees of this company to "repudiate" the sale of the claim for loss by explosion on the propeller Mohawk, and no official action has been taken by them for such a purpose.

The writ was instituted, we are told, in the names of David Dows & Co. and The Chicago Fire and Marine Ins. Co. against the pro-
168 peller Mohawk and owners, or the Western Trans. Co , we forget which. David Dows made affidavit that his firm had no interest in the claim. Subsequently our presid't, James C. Evans, was applied to for a sworn statement of his knowledge of the action of our trustees in making the sale, and as that testimony could be legally coerced from him, he, to save expense and trouble, furnished the statement voluntarily. On the 17th of this month, for the purpose, as we understood it, of enabling the counsel for the Mo-

hawk to force the knowledge of who are the real parties as plaintiffs, after long discussion at the board of trustees, and by sanction of John Ganson, (this company's counsel,) the following telegram was sent to the counsel of the Mohawk :

John Hubbell, Chicago :

Appear for and do what you think necessary to protect the interest of the Mutual Insurance Co. of Buffalo, in the cases against the Mohawk, before Drummond.

(Signed by seven trustees.)

This is all the company has done, and the above telegram was shown to the plaintiff's counsel, but was not, we are assured,
169 produced as a document in court, the postponement of the case having been obtained on other grounds.

We do not know how many of the stockholders in the propeller line may at any time be "scrip"-holders of our company, because our "scrip" is a marketable commodity, and is continually changing hands; but we have a list, obtained to-day, (for the purpose of answering your letter,) of the "Directors in the Western Transportation Company," and we find that only one of them is a member of our board of trustees, and he did not sign the preceding telegram. This plain fact will, we trust, disabuse your mind of any impression that the "Buffalo Mutual" is in any way controlled by the persons or interests of the Western Trans. Company.

Trusting this frank explanation will be entirely satisfactory to you, and that you will see no good cause for dissatisfaction with the action of the president and the trustees.

I am yours, truly,

J. L. WEATHERBY, *Sec'y.*

170 *Exhibit B, P. G. Parker, U. S. C.*

CHICAGO, *Oct.* 13*th*, 1863.

DEAR SIR : Yours of the 10th was duly received to-day. You evidently misunderstood me.

What I desired to know was, whether the Buffalo Mutual had any intention of disputing the validity of the assent made by them to Mr. Barrel of their claim against the Mohawk. I only referred to what Mr. Bates said (Mr. Hubbel was at Buffalo) at the time the court rendered the decree in these cases in reference to your company, because the court seemed to be influenced by the suggestion that you so desired to contest the matter; and the court said, if you did, we ought to amend our pleadings so as to give you the opportunity. As it will give Mr. Barrel some trouble to do this, he does not desire to disturb the present condition of the case, unless to give you such an opportunity. It is therefore but fair that you should call your committee together, or, in any way satisfactory to yourself, obtain their intents, and let Mr. Barrel know what that intention is. Mr.
171 Barrel instructs me to say that he would have no right to infer that you were in any way dissatisfied with your sale, if a telegram, signed by some of your trustees as such, had not been ex-

hibited in court, authorizing Mr. Hubbel to appear for Buffalo Mutual. An early reply will much oblige yours, truly,

R. RAE.

J. L. WEATHERBY, Esq.,
Sec. of Buffalo Mu. Ins., Buffalo.

Exhibit C, P. G. Parker, U. S. C., June 25th, 1864.

OFFICE OF THE MUTUAL INSURANCE COMPANY OF BUFFALO,
Buffalo, Oct. 15th, 1863.

R. Rae, Esq., Chicago:

DEAR SIR: I have yours of 13th, and decline calling our executive committee together, as we are assured by Mr. Hubbell that the telegram was never used, and would not be.

Yours, truly, J. L. WEATHERBY, *Sec'y.*

172 The following depositions, taken Feb'y 26th and 27th, 1864, before George Gorham, a commissioner in the northern district of New York, on behalf of the respondents, were read in the hearing of said cause in the said circuit court of the United States for the northern district of Illinois:

And the said Robert A. Jones, being about the age of forty-one years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, I did carefully examine the said Robert A. Jones, and he did thereupon depose, testify, and say as follows, viz: I have been master of a propeller on the lakes (between Buffalo and Chicago most of the time) for nine years. I was a sailor on the lakes and ocean before that. I am well acquainted with the navigation of the St. Clair flats and the new channel. The old channel has not been used for four or five years. The new channel is an artificial one. The width of the new channel is about one hundred feet. I knew the propeller Mohawk in 1860, and do now. She is one of the largest class of propellers. I have known Capt. Pheatt for
173 some 14 years. I have always heard him, understood him, and consider him one of our first-class steamer captains. I have known Jeremiah Saunders for 14 years; have sailed in the same vessel with him; he was mate and I was before the mast. The map attached to Capt. Pheatt's testimony, gotten up by Jeremiah Saunders, and now shown me, is a very good one.

Question. If you were passing through the channel over St. Clair flats, in the night time, with the propeller Mohawk, heavily loaded, and found the channel completely obstructed by a vessel lying diagonally across the channel, what would have been your course as master, to have avoided the difficulty thus presented?

(Objection by Mr. Rae.)

Answer. The witness says he would like to know how the vessel was heading, and answers that if the vessel were heading to the northward and westward, I would attempt to get by her by going under her stern.

Q. Would it have been safe, under the circumstances, to have at-

tempted to have run down against the vessel lying across the channel, with a view of moving her out of the way?

(Objected to as leading.)

174 Answer. It would not.

Question. Give a reason for that opinion.

Answer. There is a strong current running there, and the channel is very narrow, and there would be danger of sinking the vessel which lay across the channel.

Question. What difficulty would there have been in coming to an anchor on discovering this obstruction?

(Objection.)

Answer. There would have been danger of the propeller running on her own anchor.

Question. State whether there was any danger of the propeller getting on either bank by dropping an anchor.

(Objected to.)

Answer. Yes.

Question. Why could you not have gone around the head of the vessel?

(Objection.)

Answer. I would have been in danger of getting on the vessel's anchor, and also afoul of the vessel's bowsprit and jib-boom.

Question. When within about 600 feet of the obstructing vessel, what steps could you have taken to have stopped the propeller before coming in collision with the obstructing vessel?

(Objection.)

Answer. Not any that I know of, but to run her on the bank.

175 Cross-examined by libellant's counsel:

I have not talked over this matter with any one. I never heard of this matter—the suit—before to-day. Capt. Pheatt asked me to be up here at 2 o'clock to-day.

ROB'T A. JONES.

George Dickson sworn for the claimants:

I have been navigating the lakes for 18 years. I have been acquainted with the St. Clair flats for 18 years. I am acquainted with the new channel. It is an artificial channel. I do not think it is over fifty feet wide for the largest class vessels, that is, in the shallow part of it. I know the propeller Mohawk; she is one of the largest class of propellers.

Question. In passing through the channel with a propeller like the Mohawk, heavily loaded, in the night time, what would be the consequence in attempting to suddenly stop the propeller?

(Objection.)

Answer. I think in ninety-nine cases out of a hundred, she would get aground on one side or the other of the channel.

Question. Suppose a propeller like the Mohawk, under these circumstances, should discover a vessel lying across the channel

176 and obstructing the passage, what would be the most prudent course for the propeller to take—the vessel's head being to the north and west?

hibited in court, authorizing Mr. Hubbel to appear for Buffalo Mutual. An early reply will much oblige yours, truly,

R. RAE.

J. L. WEATHERBY, Esq.,
Sec. of Buffalo Mu. Ins., Buffalo.

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Question. If you were passing through the channel over St. Clair flats, in the night time, with the propeller Mohawk, heavily loaded, and found the channel completely obstructed by a vessel lying diagonally across the channel, what would have been your course as master, to have avoided the difficulty thus presented?

(Objection by Mr. Rae.)

Answer. The witness says he would like to know how the vessel was heading, and answers that if the vessel were heading to the northward and westward, I would attempt to get by her by going under her stern.

Q. Would it have been safe, under the circumstances, to have at-

tempted to have run down against the vessel lying across the channel, with a view of moving her out of the way?

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174 Answer. It would not.

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Answer. There is a strong current running there, and the channel is very narrow, and there would be danger of sinking the vessel which lay across the channel.

Question. What difficulty would there have been in coming to an anchor on discovering this obstruction?

(Objection.)

Answer. There would have been danger of the propeller running on her own anchor.

Question. State whether there was any danger of the propeller getting on either bank by dropping an anchor.

(Objected to.)

Answer. Yes.

Question. Why could you not have gone around the head of the vessel?

(Objection.)

Answer. I would have been in danger of getting on the vessel's anchor, and also afoul of the vessel's bowsprit and jib-boom.

Question. When within about 600 feet of the obstructing vessel, what steps could you have taken to have stopped the propeller before coming in collision with the obstructing vessel?

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George Dickson sworn for the claimants:

I have been navigating the lakes for 18 years. I have been acquainted with the St. Clair flats for 18 years. I am acquainted with the new channel. It is an artificial channel. I do not think it is over fifty feet wide for the largest class vessels, that is, in the shallow part of it. I know the propeller Mohawk; she is one of the largest class of propellers.

Question. In passing through the channel with a propeller like the Mohawk, heavily loaded, in the night time, what would be the consequence in attempting to suddenly stop the propeller?

(Objection.)

Answer. I think in ninety-nine cases out of a hundred, she would get aground on one side or the other of the channel.

Question. Suppose a propeller like the Mohawk, under these circumstances, should discover a vessel lying across the channel

176 and obstructing the passage, what would be the most prudent course for the propeller to take—the vessel's head being to the north and west?

(Objection.)

Answer. If I found I could not get under the vessel's stern without danger of collision, I should run her aground in preference to a collision.

Question. What would you do to get under the stern of the schooner or vessel? Or, in other words, would you make the effort to get under the vessel's stern?

(Objected.)

Answer. I would most assuredly go under the stern of the vessel, if possible, in preference to the bow.

Question. What would you think of running down against the vessel with a view of pushing her out of the way? State whether you would regard it good seamanship to do so.

(Objected.)

Answer. I do not think that it would be prudent to do so in the night, from the fact that you can't tell the exact location of the vessel, or how fast you are moving.

Question. What consequences would you apprehend from such a movement against the vessel?

Answer. I should not only apprehend doing the vessel serious damage, but getting aground myself besides.

177 Question. Would you apprehend any danger to your own vessel aside from getting aground?

(Obj'd.)

Answer. Yes; there is liability of doing the propeller damage by staving bulwarks, or taking stem off, or something of that kind.

Question. What danger or consequence would there be in coming to anchor, or attempting to, under the circumstances?

(Obj'd to.)

Answer. In the first place it would be impossible to get an anchor out in time to do any good, and if you did, there would be danger of the propeller running on her own anchor and staving a hole in her bottom, because propellers draw all the water there is in the channel.

Question. Is there any danger of getting on the banks from dropping an anchor, in addition to the other dangers?

(Objected to.)

Answer. At this place, where this vessel was, it would be impossible to come to anchor without getting aground one side or the other, with a loaded propeller, particularly head down stream.

Question. Have you ever had any experience in a matter of this sort?

(Objection. Question waived.)

GEORGE DICKSON.

178 William Dickson sworn for claimants:

I have been sailing for some ten years on the lakes, and for 15 years altogether. I am captain of the propeller Mayflower. I am acquainted with the St. Clair flats, and with the propeller Mohawk.

Question. In passing through this channel with a propeller like the Mohawk, heavily loaded, in the night time, what would be the consequence in attempting to suddenly stop the propeller?

(Objection.)

Answer. The consequence would be that in stopping her you could not steer, because you would be drawing all the water there is there. There is a strong current, probably 2 or 3 miles an hour, and it would take considerable time to stop her headway. By backing the engine the wheel has a tendency to slew the stern, and send her head on the bank. You would get on one bank or the other.

Question. Suppose a propeller like the Mohawk, under these circumstances, should discover a vessel lying across the channel and obstructing the passage, what would be the most prudent course for the propeller to take—the vessel's head being to the north and west?

(Objection.)

179 Answer. The course I would take would be to try and get under her stern, because, the way she laid across the channel, by stopping the propeller and backing you would certainly run the vessel down. The only safe course to pursue would be to go under her stern.

Question. What would you think of running down against the vessel with a view of pushing her out of the way? State whether you would regard it as good seamanship to do so.

(Obj'd.)

Answer. On a dark night you could not see the position the vessel was in till you got close on to her, so it would be impossible to stop the headway of the propeller without either striking the vessel or getting aground on the bank. That would depend on how much headway she had, or whether you could stop her or not. I would not run down against the vessel in the position she was in.

Question. Could you tell in the night time in that place how fast you were going?

(Obj'd.)

Answer. It would be very difficult without dropping a lead over the side.

Question. Then could you tell when there is a current?

Answer. You could not very near. We generally cross under a check.

Question. How much current is there?

180 Answer. I should think there was between a two and three knot current. It depends how the wind blows.

Question. What effect would it have on this vessel for a heavily loaded propeller going down with the current, even without machinery in motion, to strike her?

(Objec'd.)

Answer. If she was an old vessel, the tendency would be to sink her.

Question. Would it have a tendency to injure the vessel, or propeller, or both?

(Obj'd.)

Answer. It certainly would have a tendency to injure the vessel. If the propeller struck her a slanting blow, it would certainly injure the propeller too.

WM. DICKSON.

FEBRUARY 27th, 1864.

A. A. Eustaphieve sworn for claimants:

I was secretary of the Mutual Insurance Company for some 16 years prior to the first of April, 1863. I remember the matter of the Mohawk in the fall of 1860. The B. M. Ins. Co. had a risk upon the cargo of the Mohawk, under a certificate of insurance, No. 742, issued by Atwater of Chicago, for $9,690, in favor of T. J. Bronson, on
181 10,200 bushels of wheat, cargo of propeller Mohawk, and also by certificate No. 738, issued by Atwater in favor of Isaac Sherwood for $10,000 on 10,000 bushels of wheat, cargo of propeller Mohawk, the originals of which are in the possession of the counsel for libellants, and are to be produced upon the trial, and are now surrendered and are attached hereto, marked 1 and 2. I know the losses were paid to James D. Sawyer. Sawyer assumed to represent D. and A. Dows & Co. We paid these losses to the person holding the certificates. I think Sawyer made the abandonment upon behalf of D. and A. Dows & Co. I paid the claims to the party holding the certificates. My impression is that Dows & Co. had both certificates. Out of that loss there grew a controversy between the Buffalo Mutual Ins. Co. and the Western Tr. Co. in respect to 1,100 bushels of wheat There was no claim made by the insurance co. against the W. T. Co. growing out of this affair, other than in respect to this 1,100 bushels. A suit was commenced by the B. M. Ins. Co. ag't the W. T. Co. in the superior court of Buffalo, having reference to this 1,100 bushels of wheat. John Ganson was the attorney in the case. Ganson and myself had no consultation with regard to an agreed statement
182 of facts.

Question. Did you and Ganson consult with regard to the circumstances of the case which was brought before the bringing of the suit?

Answer. I talked with Mr. Ganson a day or two before I told him to sue the company.

Question. Did you and Mr. Ganson never have but one talk upon this matter?

Answer. I do not recollect whether I had one talk or more about the case. I did not consider the case of importance enough to talk much with Ganson about it. He was attorney for the company, and we talked generally. We had the usual interviews which are had between attorney and client. Mr. Ganson informed me that the case went to judgment. He never informed me that it was a pro forma judgment. I learned from Mr. Ganson that there had been a trial of this cause between the insurance company and the W. T. Co. I was not present at the trial; I cannot say that Mr. Ganson told me that the facts of the case were agreed upon between the counsel for the insurance co. and the W. T. Co. I did not know that the case was tried upon stipulation. I do not know that there were any witnesses called in the case. I do not remember ever reading over with
183 Ganson a stipulation which was to be agreed upon by Ganson and Mr. Hubbell of the facts in the case. I do not remember when the cause was tried. I have no recollection of a suggestion

from Ganson that I should agree to a stipulation of the facts. I know John Ganson's signature. This is his signature to this stipulation, and this is Mr. Hubbell's signature.

(Stipulation is offered in evidence, and is attached hereto, as also complaint and answer in same case. Mr. Rae objects.)

My opinion is that before any assignment of claim was made, Ganson was ordered to withdraw the suit by me. This was from 3 to 7 days before the assignment. This was after I had been informed by Ganson that there had been a trial of the case. I do not know Joshua Barrell. I had no direct correspondence with him in regard to this matter. I inserted the name of Joshua Barrell in the assignment by direction of Sam'l T. Atwater, of Chicago. Mr. Atwater negotiated with me for the assignments. I do not remember whether Atwater proposed to buy them, or to buy for some one else.

184 The negotiation was done in part by letter, and the final arrangement, I think, was made personally. It was about the time the assignment was dated. Money was handed to me by Atwater. It was paid in cash, by a draft. It was not charged in account. The money paid was some 2,300 or 2,400 dollars. Mr. Atwater was the agent of the B. M. Ins. Co., at Chicago. There had been a correspondence between Atwater and myself in reference to the bringing of a suit upon the whole claim against the W. T. Co. It seems to me we had talked the matter over, but I cannot be certain. I think I told Mr. Atwater that as far the ins. co. was concerned, they would not sue. I do not now refer to the 1,100 bushels.

Question. Was any thing said or written by Mr. Atwater by which you understood that he wished to get the claim into his own hands for the purpose of suing the W. T. Co., or anything to that effect, or on that subject?

(Objection.)

Answer. I did not understand that he wanted to get the claim into his own hands; but he never expressed but one opinion, and that was, that the company was liable, and ought to be sued.

185 Q. When he bargained for the assignment of these certificates, did you understand that it was with a view of bringing a suit against the W. T. Co., or what did Mr. Atwater say?

(Objection.)

Answer. I don't think, at the time he sent the money, that he said anything. The money was sent by Atwater from Chicago. I do not remember his saying he or any one else was going to sue any one at the time of the negotiation. Mr. Atwater did not say at the time that he was going to sue, or any one was. We talked this thing over whenever we met. He often told me that he considered the W. T. Co. liable, and that they ought to be sued. These were generalities. I think we had but one personal interview, and this was referred to then. I informed Mr. Atwater that I had been informed by one counsel in Buffalo that the ins. co. had no claim against the W. T. Co., (except the 1,100 bus.)

Ques. Did you sign the assignment of those certificates in pursu-

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(Objection.)

Answer. I did not understand that he wanted to get the claim into his own hands; but he never expressed but one opinion, and that was, that the company was liable, and ought to be sued.

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Ques. Did you sign the assignment of those certificates in pursu-

ance of any resolution of the board of trustees or directors of your company?

(Obj'd.)

Answer. I had no authority of the whole board of trustees. There was no board assembled. I explain this answer in this way.

(This explanation is objected to by Mr. Hubbell as no explanation.)

186 I was authorized by a majority of the executive comittee to make the sale and transfer. We had a board of 24 directors. The subject of these assignments was never brought before this board of directors, or the majority of them, at any regular meeting. The executive committee consisted of five members of the board, and president and secretary. The president and sec'y were members of the board of trustees. I think the executive committee was never assembled as a committee, and the subject of these assignments brought before them. I know they were not. I drew up this paper, marked Exhibit 6, and procured the signatures to it. Mr. Hazard signed it in his office. They all signed it separately in their several places of business. There was no consultation when I was present. The other members of the executive committee were James C. Evans, pres't of the co., Jason Parker, and Dean Richmond. I think nothing was said to these gentlemen in reference to assigning these claims. This resolution was simply pasted in the minute book. This money received from Atwater was credited to profit and loss, or else to marine loss.

187 All right, title, interest, and everything was *was* assigned connected with the loss. Other assignments were made at the same time connected with this. I think the board never got together but twice a year, June and Febr'y. Can't remember how soon after the assignment that I heard suit was commenced.

Cross-examination:

Our agent at Detroit, at the time of the loss, was John W. Strong. The abandonment was made at the office here.

Question. What instruction, if any, did you give Strong in reference to the cargo after you accepted the abandonment?

(Objected to on ground as incompetent.)

Answer. I instructed him to sell the damaged portion of it to the best advantage he could, just as it lay in the St. Clair flats. The instructions were all given by letter or by telegram.

Question. Did you give him any further instructions?

(Objection.)

Answer. I afterwards instructed him to let it alone and not meddle with it unless the parties waived all claim to freight. I after-

188 wards received the promissory note of one Phelps for a part of cargo sold at Detroit. I received it from the agent of the company at Detroit, by letter. The note was sent to Detroit for collection, and was protested and sent back here. I enclosed it to the W. T. Co.

(Objection.)

After I received the note I had an interview with Mr. Bryant and

Capt. Pheatt at my office. It was a few days after I received it. Mr. Bryant and Capt. Pheatt came into the office to talk over this matter of the wheat with me. They stated that the wheat was sold for account of the vessel at Detroit; that the note of $1,200 given for the proceeds of that wheat, belonged to the owners of the boat, W. T. Co. I said to them that I had sent the note to Detroit for collection, and I should hold the note as a trustee for the W. T. Co.; that I did not want anything which did not belong to me. When the note was protested it was returned by Mr. Strong. As soon as I received it back I addressed a letter to John Allen, jr., the president of the W. T. Co. This is the letter hereto annexed, marked No. 7, and is produced by the W. T. Co. I received an answer from Mr. Allen, the president of the co., with the note enclosed, saying he did
189 not want any of my protested notes. He returned the note, disclaiming any title to it. (A copy of this letter is to be annexed hereto, with the same effect as if here produced, No. 8.)

(The reply of Mr. Eustaphieve is here produced, marked Exhibit No. 9. Objection.)

Our company was sued by the Chicago Fire and Marine Insurance Co. for this loss. During the pendency of this suit I think there may have been correspondence with Mr. Atwater in reference to bringing suit against the pr. Mohawk and the W. T. Co. I think in the course of the correspondence with Mr. Atwater, before the negotiation of the assignment, that he sent me a list of authorities in reference to suing the W. T. Co. and the propeller. He furnished me with the case of the bark Edwin, 24th Howard. I think he did not refer me to an act of Congress. I think I took this list of authorities to Mr. Smith, the law partner of the insurance co.'s counsel, and he said they were inapplicable. It may be I took it to Ganson. Mr. Atwater, from the first to the last, contended that the W. T. Co. was liable, and gave his reasons for it. Before the assignment I submitted the case to our counsel as to the liability of the W. T. Co., and he was of the opinion that we could not recover. He stated that
190 the insurance company, if they sued the W. T. Co., would have to prove negligence on the part of the W. T. Co. That the onus was upon us, and we could not probably prove it.

Question. State the manner in which you have been accustomed to assign the salvage and other claims of the company for the 16 years you were secretary of the company.

(Obj'd.)

Answer. I always had been in the habit of settling up in my own way. Never asked anybody. I had been in the habit of getting the signatures of the executive committee to resolutions separately at their places of business, without their being called together, and pasting them in the book.

(Under objection.)

Question. State whether the members of the ex. com , who signed this resolution authorizing the assignment of these claims, knew the contents of the resolution and the circumstances in reference to the

loss on the pr. Mohawk, and the opinion of the counsel on the subject.

(Objec'd.)

Answer. Yes, sir, they did. They knew of it and all of them knew it.

Q. Did the ex com. know of the reception of the money?

191 Answer. I can't tell; or whether the trustees did. The security company advised me they were willing to abide by our sale, and instructed me to make the sale for them. I paid the money over to their agent here.

Question. Did Mr. Atwater represent that he bought the claims for himself or for Joshua Barrell.

(Objection.)

Answer. He represented he was acting for Joshua Barrell. I mean this at the time of the assignment. He always represented he was acting as agent. I never heard of Jeremiah Saunders or any of the facts he stated in his deposition till November last, (1863.) I knew nothing of the circumstances of this explosion and srtanding when I ordered the discontinuance of the suit on the 1,100 bushels. I had seen the vessel's protest before paying the loss, and that was all I did know. The insurance co., or the security co., or myself, reserved no rights whatever under the assignments, and do not expect any profits or emolument under the lawsuit.

Re-direct:

Henry C. Walker represented the security co. here. He

192 is the general agent, and everything was done with him. I don't think I ever heard of Joshua Barrell in connexion with this transaction, till his name was inserted in the assignment. The papers came to me from Chicago, filled up with Barrell's name, and this was the first I ever heard of him in this connexion. This is the first claim I ever sold as sec'y. This was the reason why I consulted to ex. com. The first intimation I had that the W. T. Co. claimed exclusive right to the note was when Bryant and Pheatt came to the office as I have stated. Pheatt was captain of the Mohawk. Bryant said he was sent by the W. T. Co. He was a large stockholder, and one of the directors of the co.

A. A. EUSTAPHIEVE.

193 *Exhibit* 1, *Geo. Gorham, U. S. Com'r.—Certificate of Insurance.*

The Mutual Insurance Company of Buffalo, N. Y., S. T. Atwater, agent, office No. 2 Dole's building, corner South Water and Clark streets.

$10,000. No. 738.

CHICAGO, *October* 31*st*, 1860.

This certifies that Isaac Sherwood, esq., is insured under and subject to the conditions of policy No. 100, issued by the Mutual Insurance Company of Buffalo, in the sum of ten thousand dollars, on 10,000 bushels wheat, in-board cargo of the prop. Mohawk, at and

from Chicago to Buffalo, at the rate of 2.48 per cent., which premium of $248 is hereby acknowledged to have been received.

Loss (if any) payable to J. Y. Scammon, esq., p't, order hereon, and return of this certificate.

This certificate of insurance is not valid until countersigned by Samuel T. Atwater, agent of this company at Chicago.

A. A. EUSTAPHIEVE, *Secretary.*

Countersigned at Chicago, this 31st day of Oct., 1860.

SAM. T. ATWATER, *Agent.*

194 Indorsed: H. G. Loomis, a's v. pres.; J. Young Scammon, p't.

Rec'd from Mut. Ins. Co. of Buffalo eight thousand and two hundred dollars on ac., ($8,200.)

Nov. 14, '60.

JAMES D. SAWYER.

Rec'd from Mutual Insurance Co. of Buffalo three hundred dollars ($300) on ac.

Nov. 27th, 1860.

JAMES D. SAWYER.

Rec'd from Mutual Insurance Co. of Buffalo three hundred sixty-two and $\frac{65}{100}$ dollars ($362 65) on ac.

Dec. 19, 1860.

JAMES D. SAWYER.

Rec'd from Mutual Insurance Co. of Buffalo six hundred nineteen and $\frac{37}{100}$ dollars ($619 37) on ac.

Dec. 22, 1860.

JAMES D. SAWYER.

For and in consideration of one dollar, the Mutual Insurance Co. of Buffalo does hereby assign to Joshua Barrell all thir right, title, and interest in the within certificate of insurance, with all choses in action accruing to it or for its benefit by reason of said policy.

Dated Buffalo, July 1st, 1862.

A. A. EUSTAPHIEVE,
Sec'y Mut. Ins. Co. of B.

195 *Exhibit* 2, *Geo. Gorham, U. S. Com'r.—Certificate of Insurance.*

The Mutual Insurance Company of Buffalo, N. Y., S. T. Atwater, agent, office No. 2 Dole's building, corner South Water and Clark streets.

$9,690. No. 742.

CHICAGO, *October* 31*st*, 1860.

This certifies that T. J. Bronson, esq., is insured under and subject to the conditions of policy No. 100 issued by the Mutual Insurance

Company of Buffalo, in the sum of ninety-six hundred and ninety dollars, on 10,200 bushels wheat, in-board cargo of the prop. Mohawk, at and from Chicago to Buffalo, at the rate of 2.48 per cent., which premium of $240 31 is hereby acknowledged to have been received.

Loss (if any) payable to Mes. D. & A. Dows & Co.'s order hereon, and return of this certificate.

This certificate of insurance is not valid until countersigned by Samuel T. Atwater, agent for this company at Chicago.

A. A. EUSTAPHIEVE, *Secretary.*

Countersigned at Chicago this 31st day of Oct., 1860.

SAM'L T. ATWATER, *Agent.*

196 Indorsed: Pay within to J. D. Sawyer or order.

D. & A. DOWS & CO.

T. J. BRONSON.

Rec'd on this certificate seven thousand eight hundred dollars on ac. of this loss, ($7,800.)

Nov. 14, '60.

JAMES D. SAWYER.

Rec'd on this certificate three hundred fifty-seven and $\frac{33}{100}$ dollars ($357 33) on ac. this loss.

Nov. 27, 1860.

JAMES D. SAWYER.

Rec'd on this certificate three hundred seventy and $\frac{55}{100}$ ($370 55) on ac. this loss.

Dec. 19, 1860.

JAMES D. SAWYER.

Rec'd on the within certificate five hundred eighty and $\frac{63}{100}$ ($580 63.)

Dec. 22d, 1860.

JAMES D. SAWYER.

For and in consideration of one dollar, the Mutual Insurance Company of Buffalo does hereby assign to Joshua Barrel all their right, title, and interest in the within certificate of insurance, with all
197 choses in action accruing to it or for its benefit by reason of said policy.

Dated Buffalo, July 1st, 1862.

A. A. EUSTAPHIEVE,
Sec'y M. Ins. Co. of B.

198 *Exhibit* 3, *Geo. Gorham, U. S. Com'r.*

Superior court of Buffalo.

THE MUTUAL INSURANCE COMPANY OF BUFFALO
against
THE WESTERN TRANSPORTATION COMPANY.

The following facts are to be admitted on the trial of this action for the purposes of such trial:

First. That the plaintiff and defendant are corporations created and organized as such under the laws of the State of New York, and do business in the city of Buffalo, and were such corporations doing business as aforesaid at the various times mentioned in the pleadings in this action. The plaintiff, as an insurance company doing business upon the lakes and insuring against dangers of navigation and taking marine risks of all descriptions, and the defendant being a common carrier for hire between the city of Chicago and the city of
199 Buffalo, by way of the lakes, by means of steamboats, sail vessels, and other craft, and that among the steamboats so owned and used by the defendant in its said business was the propeller Mohawk; which, at the times mentioned in the complaint, was actually engaged in the transportation of goods, property, and merchandise between Chicago and Buffalo aforesaid on account of the defendant; that in the month of October, 1860, the said propeller Mohawk was at the port and city of Chicago and about to commence a trip or voyage by way of the lakes from Chicago to Buffalo, and to take and carry such goods, property, or merchandise as might be offered for transportation, at such rates as might be agreed upon between the owner or owners of property so shipped and the master of the propeller or the agent of the defendant; that one N. K. Fairbanks then and there shipped on board the said propeller two quantities or parcels of wheat amounting to twenty thousand two hundred and seventeen bushels, to be carried and transported from Chicago to Buffalo, under the agreement contained in two bills of lading hereto annexed and which are to be taken as a part of this stipulation; that
200 the said propeller, being in good and seaworthy condition, left the port and city of Chicago in the performance of the beforementioned trip, and after the same had been more than half completed and performed in good safety, and while so engaged in the prosecution of the said trip or voyage, the said propeller, by the dangers of navigation, grounded upon St. Clair flats, and in the effort to get off the said propeller became disabled by the bursting of her boiler, and was thereby compelled to suspend the further prosecution of the said voyage until the said propeller could be got off and the necessary repairs could be made. This disaster occurred 30 miles from Detroit, in the State of Michigan, on the 7th day of November, 1860, and by it all the wheat, except that mentioned in the complaint, was damaged by the sinking of the propeller. The accident happened without fault on the part of the propeller, her officers or crew; that upon information of the said disaster reaching Buffalo, the agent of the owner of the said wheat immediately abandoned the same to the plaintiff in this action, the plaintiff having insured the same against
201 loss or damage on the said trip or voyage by reason of the dangers or risks of navigation; the plaintiff accepted the abandonment so made, and paid the loss to the owner of the wheat; that soon after this accident the defendant removed from the propeller the wheat in the complaint mentioned, in good order, and shipped the same for Buffalo, which reached there on the 16th of November, 1860, and the agent of the plaintiff sold the balance of the wheat on board

Company of Buffalo, in the sum of ninety-six hundred and ninety dollars, on 10,200 bushels wheat, in-board cargo of the prop. Mohawk, at and from Chicago to Buffalo, at the rate of 2.48 per cent., which premium of $240 31 is hereby acknowledged to have been received.

Loss (if any) payable to Mes. D. & A. Dows & Co.'s order hereon, and return of this certificate.

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For and in consideration of one dollar, the Mutual Insurance Company of Buffalo does hereby assign to Joshua Barrel all their right, title, and interest in the within certificate of insurance, with all
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Dated Buffalo, July 1st, 1862.

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First. That the plaintiff and defendant are corporations created and organized as such under the laws of the State of New York, and do business in the city of Buffalo, and were such corporations doing business as aforesaid at the various times mentioned in the pleadings in this action. The plaintiff, as an insurance company doing business upon the lakes and insuring against dangers of navigation and taking marine risks of all descriptions, and the defendant being a common carrier for hire between the city of Chicago and the city of
199 Buffalo, by way of the lakes, by means of steamboats, sail vessels, and other craft, and that among the steamboats so owned and used by the defendant in its said business was the propeller Mohawk, which, at the times mentioned in the complaint, was actually engaged in the transportation of goods, property, and merchandise between Chicago and Buffalo aforesaid on account of the defendant; that in the month of October, 1860, the said propeller Mohawk was at the port and city of Chicago and about to commence a trip or voyage by way of the lakes from Chicago to Buffalo, and to take and carry such goods, property, or merchandise as might be offered for transportation, at such rates as might be agreed upon between the owner or owners of property so shipped and the master of the propeller or the agent of the defendant; that one N. K. Fairbanks then and there shipped on board the said propeller two quantities or parcels of wheat amounting to twenty thousand two hundred and seventeen bushels, to be carried and transported from Chicago to Buffalo, under the agreement contained in two bills of lading hereto annexed and which are to be taken as a part of this stipulation; that
200 the said propeller, being in good and seaworthy condition, left the port and city of Chicago in the performance of the beforementioned trip, and after the same had been more than half completed and performed in good safety, and while so engaged in the prosecution of the said trip or voyage, the said propeller, by the dangers of navigation, grounded upon St. Clair flats, and in the effort to get off the said propeller became disabled by the bursting of her boiler, and was thereby compelled to suspend the further prosecution of the said voyage until the said propeller could be got off and the necessary repairs could be made. This disaster occurred 30 miles from Detroit, in the State of Michigan, on the 7th day of November, 1860, and by it all the wheat, except that mentioned in the complaint, was damaged by the sinking of the propeller. The accident happened without fault on the part of the propeller, her officers or crew; that upon information of the said disaster reaching Buffalo, the agent of the owner of the said wheat immediately abandoned the same to the plaintiff in this action, the plaintiff having insured the same against
201 loss or damage on the said trip or voyage by reason of the dangers or risks of navigation; the plaintiff accepted the abandonment so made, and paid the loss to the owner of the wheat; that soon after this accident the defendant removed from the propeller the wheat in the complaint mentioned, in good order, and shipped the same for Buffalo, which reached there on the 16th of November, 1860, and the agent of the plaintiff sold the balance of the wheat on board

the propeller where she then lay, and as it then was, to one F. E. Phelps for 1,200, on a credit of 30 days, taking his note for the amount, with an indorser satisfactory to said agent. The note was thereupon executed by Phelps and indorsed as agreed, and delivered to the plaintiff, who then came with Mr. Phelps to the master of the propeller in Detroit, and informed him of the sale; the master, at the request of such agent, then gave Phelps a written order on the officer of the propeller to deliver the wheat to Mr. Phelps, and thereupon the said Phelps proceeded to the propeller and demanded the wheat from the officers thereof under his said purchase from the plaintiff, and Phelps then commenced taking the wheat from the propeller; that
202 the next day the agent of the plaintiff at Detroit called upon the master of the propeller and stated to him that he had instructions from the home office, which was the fact, to annul the sale to Phelps, and said he intended to do so, on the ground that the plaintiff had heard or been advised that the defendant intended to claim and insist that it was entitled to freight upon the said wheat, notwithstanding the accident. The master of the propeller having charge, then said the sale was a good one for all parties, and advised the said gent of the plaintiff not to interfere with what had been done, but to let the sale stand as having been made on account of whom it might concern. The plaintiff's agent assented to this and took no other steps in reference to the wheat on the propeller, and Phelps continued to take from the propeller 8,000 bushels of the wheat; and the balance of all of the wheat mentioned in the bills of lading, except the eleven hundred and odd bushels mentioned in the pleadings, which had been sent forward to Buffalo by the defendant in another vessel, remained in the propeller till it was got off and towed to Detroit, when such balance was delivered to Mr. Phelps, being eleven
203 thousand and ninety bushels. Mr. Phelps reshipped from Detroit to Buffalo, on the 20th of November, 1860, 3,500 bushels of said wheat, which was sent on board of said propeller for Buffalo at a freight of five cents per bushel, which was transported from Detroit to Buffalo on said propeller, which was towed to Buffalo, and the said freight was there paid by the said Phelps to the defendant. The note given by Phelps to the plaintiff was retained by the plaintiff and is now in the possession of the plaintiff. The propeller Mohawk was got off after a few days, and subsequently was towed to Buffalo in a disabled condition before the close of navigation for that year, which closed about the middle of December. The place of the disaster was at St. Clair flats, about 39 miles from Detroit, directly in the track of vessels engaged in the lake trade between Buffalo and Chicago. No part of the freight on the wheat has ever been paid or tendered by the shipper or owners thereof, or by the plaintiff, or any other person or persons, except as hereinafter mentioned. At the time the same was delivered to and taken by Phelps no offer to pay the freight or any portion of it was made by him or by any other person or
204 persons. The wheat mentioned in the pleadings was not delivered to Phelps, but was brought to Buffalo, and the plaintiff claimed to own the same and to be entitled to its possession under

and by virtue of the abandonment hereinbefore mentioned. The defendant claimed and insisted that it was entitled to freight upon the entire shipment, including as well that which was delivered to Phelps at St. Clair flats and Detroit as that which had been brought to Buffalo, being the wheat mentioned in the complaint, and declined to deliver the same to the plaintiff until the freight on the entire shipment was paid or adjusted. The plaintiff thereupon tendered to the defendant an amount equal to fifteen cents per bushel upon the wheat so brought to Buffalo mentioned in the complaint, and a sum in addition to cover the general average charges, and demanded the delivery of the wheat to it, which was refused by the defendant, and thereupon this action was commenced. The wheat mentioned in the complaint was worth 95 cts. per bushel. If the defendant is only entitled to pro rata freight, the sum is stipulated at 7½ cents per bushel on the 20,000 bushels, and, if to full freight, at 15 cents per bushel on the 20,000 bushels.

205 CHICAGO, *Oct* 31, 1860.

Shipped in good order and condition by N. K. Fairbank, as agent and forwarder, for account and at the risk of whom it may concern, on board the prop'l Mohawk, wherof Pheatt is master, the following articles as here marked and described, to be delivered in like good order and condition as addressed on the margin, or to his or their assigns or consignees, upon paying the freight and charges as noted below, the dangers of navigation, fire and collision excepted.

In witness whereof the said master of said vessel hath affirmed to bills of lading, of this tenor and date, one of which being accomplished, the other to stand void.

Ac't and property of David Dows & Co., New York, care J. D. Sawyer, Buffalo. 10,217 45 bush. No. 1 spring wheat, freight to Buffalo, 15 c.

(Signed) JON. W. TUTTLE, *Agent.*

CHICAGO, *Oct.* 31, 1860.

Shipped in good order and condition by N. K. Fairbank, as agent and forwarder, for account and at the risk of whom it may
206 concern, on board the prop'l Mohawk, whereof Pheatt is master, the following articles as here marked and described, to be delivered in like good order and condition as addressed on the margin, or to his or their assigns or consignees, upon paying the freight and charges as noted below, the dangers of navigation excepted.

In witness whereof the master of said vessel hath affirmed to bills of lading, of this tenor and date, one of which being accomplished, the other to stand void.

Ac't Chicago Fire and Marine Ins'e Co., care J. D. Sawyer, Buffalo. 10,000 bush. No. 1 spring wheat, freight to Buffalo, 15 c.

(Signed) JON. W. TUTTLE, *Ag't.*

JOHN HUBBELL, *Defendant's Att'y.*

JOHN GANSON, *Pl'ff's Att'y.*

207 *Exhibit* 4, *Geo. Gorham, U. S. Com'r.—Summons—relief—complaint served.*

Superior court of Buffalo.

THE MUTUAL INSURANCE COMPANY OF BUFFALO, plaintiff,
against
THE WESTERN TRANSPORTATION COMPANY, defendant.

To the abovenamed defendant:

You are hereby summoned to answer the complaint in this action, of which a copy is herewith served upon you, and serve a copy of your answer on me, at my office in the city of Buffalo, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint as aforesaid, the plaintiff will apply to the court for the relief demanded in the said complaint.

Dated Buffalo, December 13th, 1861.

JOHN GANSON,
Plaintiff's Attorney, Buffalo.

208 Superior court of Buffalo.

THE MUTUAL INSURANCE COMPANY OF BUFFALO
against
THE WESTERN TRANSPORTATION COMPANY.

The Mutual Insurance Company of Buffalo, by John Ganson, its attorney, complains of the Western Transportation Company, defendant in this action, according to the form of the statute in such case made and provided, for that heretofore, and on or about the first day of December, one thousand eight hundred and sixty, the said defendant, which is a body corporate and politic, created, existing, and doing business as such under and by virtue of an act of the people of the State of New York represented in senate and assembly, entitled "An act for the incorporation of companies formed to navigate the lakes and rivers," passed on the fifteenth day of April, one thousand eight hundred and fifty-four, and of the acts amendatory thereof and supplementary thereto, converted to its own use eleven
209 hundred and fifty-seven bushels and twenty-two pounds of wheat, the property of the plaintiff, being a part of the cargo of the propeller Mohawk, of the value of fifteen hundred dollars.

The plaintiff in fact further says, that it is a body corporate and politic, created, existing, and doing business as such under and by virtue of an act of the people of the State of New York in senate and assembly represented, entitled "An act to incorporate the Mutual Insurance Company of Buffalo," passed on the eighteenth day of April, one thousand eight hundred and forty-three, and of the acts amendatory thereof and supplementary thereto.

Wherefore the plaintiff demands a judgment against the defendant for the sum of fifteen hundred dollars and the costs of this action.

JOHN GANSON, *Plaintiff's Attorney.*

STATE OF NEW YORK, *Erie county, ss:*

Alexander A. Eustaphieve, being duly sworn, deposes and says that he is the secretary of the Mutual Insurance Company of Buffalo, the plaintiff in the preceding complaint named; that he
210 has read the said complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters, he believes it to be true.

A. A. EUSTAPHIEVE.

Subscribed and sworn to before me this 13th day of December, A. D. 1861, at the city of Buffalo.

THOS. BATH,
Com'r of Deeds for the City of Buffalo.

Exhibit 5, Geo. Gorham, U. S. Com'r.

Superior court of Buffalo.

THE MUTUAL INSURANCE COMPANY OF BUFFALO
against
THE WESTERN TRANSPORTATION COMPANY OF Buffalo.

The Western Transportation Company, the defendant in this action, by John Hubbell, its attorney, comes and defends the
211 same, and for answer to the complaint therein, the defendant denies each and every allegation in the said complaint contained, in manner and form as the same are therein stated and set forth, except the allegations therein as to the incorporation of the said defendants, which is admitted to be true as stated in the said complaint.

Second. And, for a further answer to the said complaint, the defendant says that in the month of October, one thousand eight hundred and sixty, it then was and ever since has been and still is a common carrier for hire upon the lakes between the city of Chicago and the city of Buffalo, and was and is the owner of steam and sail vessels which then were, and still are, used and employed by the said defendant in the business aforesaid, and that the propeller Mohawk mentioned in the complaint was used and employed by the defendant in the said business, and was, on or about the thirty-first day of October in the year aforesaid, at the said city of Chicago, and about to commence a trip or voyage from Chicago to Buffalo, by way of the lakes, and to take or carry on such trip or voyage such goods,
212 property, and merchandise as might be offered for transportation for hire, and at such rates of freight as might be agreed upon. And that, on or about the day aforesaid, certain persons at Chicago aforesaid, shipped on board the said propeller a certain par-

cel or quantity of wheat, consisting of twenty thousand two hundred and seventeen bushels and forty-five pounds of wheat, under an agreement that the same should be transported by way of the lakes from Chicago to Buffalo, and that the said defendant should have and receive as freight for such carriage and transportation fifteen cents per bushel, upon the delivery of the same at Buffalo aforesaid to the consignees named in the bills of lading then and there executed by the master of the said propeller and the shipper of the said wheat; that one portion of the said wheat, consisting of ten thousand two hundred and seventeen bushels and forty-five pounds, was upon the said bills of lading consigned to the account of D. and A. Dows & Co., New York, to the care of J. D. Sawyer, at Buffalo aforesaid, the freight upon which amounted to fifteen hundred thirty-two dollars and sixty-seven cents; and the other portion of the said wheat was consigned to the account of the Chicago Fire and Marine Insurance Company,
213 to the care of J. D. Sawyer, at Buffalo aforesaid, the freight upon which amounted to fifteen hundred dollars; and the said defendant in fact further says, that the said propeller having received on board thereof the said parcel or quantity of wheat, under the said agreement, and bills of lading having been duly executed therefor, left the port of Chicago aforesaid for Buffalo aforesaid, by way of the lakes, and while engaged in the performance of the said trip or voyage, and while she was engaged in the process of earning the freight upon the said wheat was, by mere accident and without fault on the part of the said defendant, or of the officers or crew of the said propeller, temporarily disabled and compelled to suspend for a time the prosecution of the said voyage, until the necessary repairs could be made, which said accident and misfortune happened when the said trip or voyage had been about half completed and performed. And the said defendant further says, that the owners and consignees of the said wheat, immediately upon the occurrence of the said accident, made an abandonment thereof to the said plaintiff, who had made certain insurances upon the said wheat, the
214 precise nature of which is unknown to the said defendant; and the said defendant further says, that the abandonment was thereupon accepted by the said plaintiff, and the said plaintiff, under and by virtue of said abandonment, thereupon claimed to be the owner of the said wheat, and of every portion thereof, and did then and there assume the control and disposition of the same; and the said plaintiff did then and there sell and dispose of a portion thereof, and did demand and require the said defendant to deliver the said wheat to the said plaintiff, and to persons claiming through and under the said plaintiff, at the place where said accident happened, and while the said propeller was then and there detained; and thereupon the said defendant, in pursuance of such demand and request of the said plaintiff, did deliver the greater portion of said wheat to the said plaintiff and to the persons claiming under them, at the place where such accident happened as aforesaid; and that the said plaintiff did not nor would pay to the said defendant the freight so agreed to be paid, nor any part nor portion thereof, but took and

converted the said wheat to its own use, and have hitherto
215 wholly refused to pay the freight or any part or portion thereof, or any sum whatever, by way of compensation for such carriage and transportation; and the said defendant in fact further says that, at the same the said wheat was so taken and demanded by the plaintiff, and delivered by the said defendant, the said defendant was ready and willing to carry out and fulfil the said contract for the transportation of the said wheat, and to deliver the same at Buffalo aforesaid, according to the said bills of lading, within a reasonable time, of which the plaintiff had notice; and that it was prevented from so performing the said contract by reason of the actings and doings hereinbefore mentioned. That the said defendant was the owner of other steam and sail vessels, upon which the said wheat could have been transhipped and brought to Buffalo in case the accident should prove of so serious a nature as to occasion great delay in the performance of said contract; and the said defendant further says, that there was delivered to the said plaintiff, and to the persons so claiming under it, all of said cargo except the wheat mentioned in the complaint, and for the wheat so taken and de-
216 livered the defendant claims and insists that it is entitled to have and receive from the said plaintiff the freight and compensation justly due for the carriage and transportation of the said wheat, by reason of the matters and things hereinbefore mentioned and set forth.

Third. And, for a further answer to the said complaint, the defendant says that the wheat mentioned and set forth in the complaint was and is part and parcel of the shipments and cargo of wheat mentioned in the foregoing second answer, and none other or different. That the said plaintiff has hitherto wholly refused to pay the freight and compensation justly due to the defendant for the carriage and transportation of the said cargo and shipments of wheat in the foregoing answer mentioned; and that the said defendant has detained the said wheat mentioned in the complaint, and do still detain the same as security and for the purpose of enforcing its lien thereon for the transportation and carriage therein before mentioned; and the said defendant in fact further says, that the wheat mentioned in the complaint is of less value than the amount and sum jointly due for
217 the carriage and transportation aforesaid; wherefore the defendant demands judgment against the said plaintiff for the sum justly due to it for the carriage and transportation of the said property, together with the costs of this action.

JOHN HUBBELL, *Defendant's Attorney.*

ERIE COUNTY, *City of Buffalo:*

Bard. A. Root, of the city of Buffalo, being duly sworn, says that he is the secretary of the defendant, and is acquainted with the facts of this case; that the foregoing answer is true of his own knowledge, except as to the matters which are therein stated on the information and belief of this deponent, and as to those matters, he believes it to be true.

B. A. ROOT.

Sworn before me this 15th day of April, 1862.
WM. C. FITCH, *Com. of Deeds.*

218 *Exhibit* 6, *Geo. Gorham, U. S. Com'r.*

OFFICE MUT. INS. CO. OF BUFFALO, *June* 28, '62.

In committee:

Resolved, That the secretary be hereby authorized to sell any and all claims this company may have *vs.* the pro. Mohawk, for and in consequence of the sinking and damaging a cargo of wheat on board of said vessel on St. Clair flats in the fall of 1860, reserving the claim now in suit to the said wheat delivered at Buffalo.

The condition and consideration of the above sale to be one thousand dollars to be paid to this company by said purchaser.

E. S. HAZARD.
S. K. WORTHINGTON.
A. A. EUSTAPHIEVE.
M. P. BUSH.
Executive Committee.

219 *Exhibit No.* 7, *Geo. Gorham, U. S. Com'r.*

OFFICE OF THE MUT. INS. CO. OF BUFFALO, *Dec.* 20, '60.

John Allen, jr., esq., pr. W. T. Co.:

Some days since Mr. G. H. Bryant, connected with your company, informed me that the grain on Mohawk "was sold for account of W. T. Co." I informed him, if so, that I did not propose to keep it, the note, only in trust. Capt. Pheatt confirms Mr. Bryant's statement that "cargo was sold for ac't Mohawk." I therefore enclose herewith the note of Mr. Phelps, 1,200, and pro. $\frac{75}{100}$, as claimed by your company.

Mr. Strong assures me the note is good, and maker can give security, but cannot realize the money at present.

Very respectfully,

A. A. EUSTAPHIEVE, *Sec'y.*

220 THE WESTERN TRANSPORTATION COMPANY OFFICE,
Erie Basin, Buffalo, Dec. 21, 1860.

A. A. Eustaphieve, esq., sec't'y Mutual Ins. Co.:

We have your favor of yesterday covering a protested note of F. E. Phelps, of Detroit. Our understanding of the transaction referred to in your letter is, in substance, that the wheat was sold by the Buffalo Mutual Ins. Co., on the 12th day of November last past, to Mr. Phelps upon a credit of thirty days, and the note taken by your co., in payment; and that, at the request and under the direction of your company, the wheat was delivered to and taken possession of by Mr. Phelps, under and in pursuance of that sale. How this can be construed into a sale "on account of the W. T. Co.," or "on account of the Mohawk," is more than we can understand. And we are equally at a loss to ascertain how you can be regarded

as holding the note in question in trust for our benefit or
221 otherwise. At all events we cannot recognize the existence of any state of facts which authorize the assumption in your letter. We therefore return the note to you, and beg leave to say that never having had anything to do with either the maker or indorser of the paper, we do not feel called upon to trouble ourselves in looking after their responsibility upon paper they have allowed to be dishonored.

Respectfully, yours,

(Signed) JNO. ALLEN, JR.

Exhibit No 9, *Geo Gorham, U. S. Com'r.*

OFFICE OF THE MUT. INS. CO. OF BUFFALO, *Dec.* 22, '60.

Jno. Allen, jr., esq., president:

I am in receipt of your letter, 21st, returning to me the note of Mr. Phelps, given for the sale of damaged wheat in pro. Mohawk, and am glad that it has only taken about six weeks for you to make
222 up your mind that you had no right to said note, and that it will not take more than six weeks longer for you to come to the conclusion that you have as much right to the sound wheat saved as you had to the note.

Your letter seems to contain an implied doubt as to the veracity of my statement as to the sale of said cargo. Whether you, seated over a comfortable fire in Buffalo, know more about it than your authorized agent, Mr. Bryant, and your captain, Pheatt, together, on the spot at Detroit, I beg leave to let you gentlemen settle the question amongst yourselves; all I have to say is, that what I wrote to you on 20th, as to what they informed me, is true, and I don't believe either of them will be rash enough to deny it.

Very respectfully,

A. A. EUSTAPHIEVE.

223 UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

I, Geo. Gorham, a commissioner duly appointed by the circuit court of the United States for the second circuit and northern district of New York, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes pending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the testimony of Robert A. Jones, George Dickson, William Dickson, and Alexender A. Eustaphieve is material and necessary in the cause, the title whereof is in the caption of said deposition named, and pending in the circuit court of the United
224 States for the northern district of Illinois, and that the said witnesses lived at a greater distance than one hundred miles from Chicago, in the State of Illinois, the place of trial of said cause.

I further certify that on the 26th and 27th days of February, in the year of our Lord one thousand eight hundred and sixty-four, I was attended by John Hubbell, esq., counsel for the claimants, and by Rob't Rae, esq., counsel for the libellants, and by the witnesses aforesaid, who were of sound mind and of lawful age, and the witnesses were by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; and their depositions were by me reduced to writing in the presence of the witnesses aforesaid, and from their statements; and after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing up and directing the same with my own hand to the court for which the same were taken; and I certify that the same will be retained by me until I shall deposit the same with my own hand, sealed up and directed as aforesaid, in the post office at Buffalo,
225 New York, the place where the said depositions were taken.

And I do further certify, that I am not of counsel or attorney for either of the parties in the said depositions and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand, this eighth day of March, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth.

GEO. GORHAM,
United States Commissioner, &c.

226 On this day, to wit, the 20th day of July, A. D. 1865, came said libellants, by their proctor, and filed in said clerk's office their petition for an appeal, which said petition is in the words and figures following, to wit:

In the United States circuit court for the northern district of Illinois, in admiralty.

THE CHICAGO MARINE AND FIRE INSURANCE Company, David Dows, Ammi Dows, and John D. Muir, libellants and appellants,
vs.
THE PROPELLER MOHAWK, respondent, and the Western Transportation Company, claimants and appellee.

To the honorable the Supreme Court of the United States:

The petition of Joshua Barrell respectfully showeth: That on the 1st day of August, A. D. 1862, the abovenamed the Chicago Marine and Fire Insurance Company, and the abovenamed David Dows,
227 Ammi Dows, and John D. Muir, filed their respective libels in the United States district court for the northern district of Illinois, against the propeller Mohawk, her tackle, apparel, engines, machinery, &c., in two certain causes, civil and maritime, for the recovery of damages alleged to have been sustained by the said libel-

lants to a certain cargo of wheat at a time prior laden upon the said propeller, and by her to have been carried and safely delivered at Buffalo, in the State of New York; and that the said propeller was arrested upon process issued upon said libels, and was discharged on said claimant filing its claim and entering into stipulations and bonds; and the said claimant thereupon filed answers to said libels, and such proceedings were had on the respective causes that, on the 30th day of September, A. D. 1863, a final decree was made and pronounced therein by the said district court, wherein it was in substance adjudged that the libels of the said libellants be dismissed with costs, and that said claimants have and recover against the said libellants the amount of the costs to be taxed in the said causes. And, after such final decree, your petitioner duly appealed therefrom to the United States circuit court for the northern district of Illinois, and the said causes were removed thereby into the said circuit court, and on the
228 23d day of October, A. D. 1863, the said causes, by order of the said circuit court, were consolidated and made one, as in the title herein set forth; and at the time last aforesaid your petitioner, by order of said circuit court, was subrogated to all the rights of all the said libellants, and the said cause was there tried anew, and such proceedings were there had in the said circuit court, to wit, that afterwards, on the tenth day of July, A. D. 1865, the said circuit court made a final decree in said cause, whereby it was decreed that the said decrees of the said district court be in all things affirmed, with costs, and that the said claimants have execution for their costs to be taxed, which said decree of said circuit court is, as this appellant is advised, erroneous and ought to be reversed. Wherefore this your petitioner appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court, and the libels, answers, pleadings, depositions, evidence, and proceedings in said cause be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court, and every part thereof, may be reversed, and a decree made condemning
229 said claimants to pay and satisfy the damages aforesaid, with costs, or such other decree as to the said Supreme Court shall seem just.

JOSHUA BARRELL.

Indorsed: Filed July 20th, 1865.

WM. H. BRADLEY, *Clk.*

On the same day, to wit, the 20th day of July, A. D. 1865, came said libellants, by their proctor, and filed in said clerk's office their appeal bond, which said bond is in the words and figures following, to wit:

United States of America, northern district of Illinois, in the circuit court.

THE CHICAGO MARINE AND FIRE INSURANCE Company, David Dows, Ammi Dows, and John D. Muir, libellants and appellants,
vs.
THE PROPELLER MOHAWK, respondent, the Western Transportation Company, claimant and appellees.
} In admiralty.

Know all men by these presents that we, Joshua Barrell, as
230 principal, and John Stafford, as surety, of the city of Chicago, in the county of Cook and State of Illinois, are held and firmly bound unto the abovenamed the Western Transportation Company in the sum of one thousand dollars, to be paid to the said Western Transportation Company, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the nineteenth day of July, A. D. 1865.

Whereas the abovenamed appellants have prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above-entitled cause by the United States circuit court for the northern district of Illinois: Now, therefore, the condition of this obligation is such that if the abovenamed appellants shall prosecute their appeal to effect, and answer all damages and costs if they fail to make good their appeal, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JOSHUA BARRELL. [SEAL.]
JOHN F. STAFFORD. [SEAL.]

231 John F. Stafford, being duly sworn, deposes and says that he resides in the city of Chicago, and is worth the sum of one thousand dollars over and above all his just debts and liabilities.

Subscribed and sworn before me this 20th day of July, A. D. 1865.

Approved. THOMAS DRUMMOND.

Indorsed: Filed July 20th, 1865.

WM. H. BRADLEY, *Clk.*

232 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing, from pages one to two hundred and thirty-one, inclusive, to be a true and complete transcript of the record of all the proceedings had in the cause in said court, wherein the Chicago Marine and Fire Insurance Company, David Douse, Ammi Douse, and John D. Muir are the libellants, and the Propeller Mohawk is the defendant, as appears from the records of said court remaining in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said northern district of Illinois, this twentieth day of November, A. D. 1865.

[SEAL.] WILLIAM H. BRADLEY, *Clerk.*

Filed December 11, 1865.

REC. 334—7